NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 7, 2025*
Decided January 8, 2025

Before

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-2681

JOSHUA W. HARMON,
Plaintiff-Appellant,

v.

KEVIN A. CARR, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 24-cv-437-pp

Pamela Pepper,
Chief Judge.

O R D E R

Joshua Harmon, a Wisconsin prisoner, sued prison officials for denying him access to a restroom for one hour, for issuing a conduct report (which officials later dismissed) because he urinated on himself, and for rejecting his grievance about the lack of restroom access. *See* 42 U.S.C. § 1983. The district court dismissed his complaint

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

for failure to state a claim. Because the alleged one-hour delay in access to a restroom and the related administrative actions failed to state a claim for relief, we affirm.

We accept the allegations in Harmon's complaint as true and view them in the light most favorable to him. *Thomas v. Neenah Joint Sch. Dist.*, 74 F.4th 521, 522 (7th Cir. 2023). In October 2023, Harmon, who is incarcerated at Oshkosh Correctional Institution in Oshkosh, Wisconsin, had a visit with his family for roughly two hours. An hour into the visit, Harmon asked a guard if he could use the restroom. The guard responded that, under the prison's policy, Harmon had to wait until after the visit ended. Another hour later, when the visit ended, Harmon again asked to use the restroom. The guard responded that he first had to pass through a metal detector, which he did, at which time the guard said, "it will be a second." Minutes later, Harmon urinated on himself.

Two internal actions followed. First, Harmon filed a grievance. He explained that, after an hour delay, he could not stop from urinating on himself and asked that the prison not issue a conduct report for doing so. The prison issued a conduct report anyway, stating that Harmon had created a risk of serious disruption at the facility, but it later dismissed that conduct report, and because of that dismissal, it also dismissed his grievance. Harmon unsuccessfully challenged the dismissal of his grievance, arguing that it contested the guard's refusal to allow him to use the restroom after an hour, not the legitimacy of the conduct report.

Harmon sued the guard who delayed his restroom access for an hour, the officials involved in his conduct report and grievance, and the Wisconsin Department of Corrections and its Secretary. *See* 42 U.S.C. § 1983. The district court screened Harmon's amended complaint and dismissed it for failure to state a claim. *See* 28 U.S.C. § 1915A. It analyzed the claim about the restroom under the Eighth Amendment and ruled that the denial of a toilet for roughly an hour did not violate Harmon's rights. As for his claims about the grievance and conduct report, the court explained that the processing of those matters also did not violate Harmon's rights. It next dismissed the claims against the Secretary because Harmon did not allege that he was personally involved, and the claims against the Department failed because it is not a "person" suable under § 1983. Finally, the court did not offer Harmon leave to amend, concluding that doing so would be futile.

On appeal, Harmon challenges the district court's dismissal of his complaint, a ruling that we review de novo. *Perez v. Fenoglio*, 792 F.3d 768, 776 (7th Cir. 2015). He first argues that the court improperly used a heightened pleading standard in screening

his suit and that, under the right standard, he stated an Eighth Amendment claim. In its dismissal order, the district court stated the standard correctly:

> "In determining whether the amended complaint states a claim, the court applies the same standard that it applies when considering whether to dismiss a case under Federal Rule of Civil Procedure 12(b)(6). *See Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017) (citing *Booker-El v. Superintendent, Ind. State Prison*, 668 F.3d 896, 899 (7th Cir. 2012)). To state a claim, the amended complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). The amended complaint must contain enough facts, "accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows a court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. (citing *Twombly*, 550 U.S. at 556)."

Harmon fails to provide any example of where the district court supposedly deviated from this correct standard or required particularized factual allegations, and in our own review of the district court's analysis, we see none.

That said, we still independently review the dismissal, and we conclude that Harmon has not stated a claim against any of these defendants. To avoid dismissal on the restroom claim against the guard, Harmon must plead facts sufficient to draw a reasonable inference that the guard is liable under the legal theory Harmon advances, the Eighth Amendment. *See Schillinger v. Kiley*, 954 F.3d 990, 993–94 (7th Cir. 2020). To do so, he must allege that the guard knew of and consciously disregarded a substantial risk of severe harm to Harmon. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994). He has not. Although Harmon alleges that the guard denied him access to a toilet for an hour, he does not contend that he has a medical condition affecting his continence or that he risks serious harm by having to wait an hour to use the restroom, let alone that the guard knew this. Thus, his one-hour lack of restroom access did not violate his Eighth Amendment rights. *Cf. Harris v. Fleming*, 839 F.2d 1232, 1234–36 (7th Cir. 1988) (affirming summary judgment on Eighth Amendment claim from prisoner who lacked toilet paper for five days, reasoning that nothing suggested that the defendants deliberately disregarded known harms). Harmon replies that the guard disregarded an intra-prison policy governing bathroom access for prisoners during family visits. But a violation of prison policy does not by itself offend the Eighth Amendment. *Courtney v.*

Butler, 66 F.4th 1043, 1052–53 (7th Cir. 2023) (citing *Scott v. Edinburg*, 346 F.3d 752, 760 (7th Cir. 2003) ("§ 1983 protects plaintiffs from constitutional violations, not violations of state laws or, in this case, departmental regulations.").

The district court also properly dismissed the remaining defendants. Harmon's allegations against the officials who issued the conduct report or denied his grievance do not state a claim because he accuses them of failing to follow state-law grievance policies, but a violation of state law does not by itself violate the Eighth Amendment. *See Owens v. Evans*, 878 F.3d 559, 563 (7th Cir. 2017). The closest he comes is accusing them of violating the Eighth Amendment by not achieving a different administrative outcome, but the Eighth Amendment does not entitle him to a particular outcome. *See id.* The district court also correctly dismissed the claims against the Department because it is not subject to suit under § 1983. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). Finally, the claims against the Secretary fail because, as the district court observed, Harmon did not allege that he had any personal involvement in the events. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). Further, even if Harmon believes that the Secretary should have created a policy that grants prisoners restroom access after one hour of a two-hour family visit, for the reasons stated above, such brief inaccessibility does not violate the Eighth Amendment.

One final matter. This court typically cautions district courts not to dismiss a prisoner's complaint under § 1915A, as happened here, without first granting leave to amend, *see Perez*, 792 F.3d at 783, "unless it is certain … that any amendment would be futile or otherwise unwarranted," *Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago & Nw. Indiana*, 786 F.3d 510, 519–20 (7th Cir. 2015). Although the district court did not allow Harmon the opportunity to amend his complaint after its § 1915A screening, its decision was proper. For one thing, Harmon had already amended his complaint. In addition, Harmon does not contest the court's view that amendment would be futile.

AFFIRMED