

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

JORDAN WILLIAM WASHINGTON)	
COLBURN,)	
)	
Plaintiff,)	
vs.)	NO. 4:08-cv-00094-DFH-WGH
)	
DR. JOHN COLLIER,)	
MIKE HOPPER,)	
)	
Defendants.)	

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

JORDAN WILLIAM WASHINGTON COLBURN,))	
)	
Plaintiff,)	
vs.)	No. 4:08-cv-094-DFH-WGH
)	
SHERIFF TIM WILKERSON, <i>et al.</i> ,)	
)	
Defendants.)	

Entry Discussing Motions for Summary Judgment

Jordan William Washington Colburn alleges in this civil rights action that he was denied constitutionally adequate medical care while he was confined at the Crawford County Jail. The claims resolved in this Entry are asserted against Crawford County Sheriff Sheriff Tim Wilkerson and Jail Commander Neal Richard. Claims against other defendants remain but are not discussed in this Entry. As used in this Entry, the term “Sheriff defendants” refers to Crawford County Sheriff Sheriff Tim Wilkerson and Jail Commander Neal Richard.

Both Colburn and the Sheriff defendants seek resolution of Colburn’s claim through the entry of summary judgment. After considering the pleadings, the motions for summary judgment, the responses thereto, and the evidentiary record, the court finds that Colburn’s motion for summary judgment must be **denied**, while that of the Sheriff defendants must be **granted**. This conclusion is based on the following facts and circumstances:

1. Summary judgment is appropriate “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. Rule 56(c). Rule 56(c) further requires the entry of summary judgment, after adequate time for discovery, against a party “who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A “material fact” is one that “might affect the outcome of the suit.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine only if a reasonable jury could find for the non-moving party. *Id.* If no reasonable jury could find for the non-moving party, then there is no “genuine” dispute. *Scott v. Harris*, 127 S. Ct. 1769, 1776 (2007).

2. A party seeking summary judgment bears the initial responsibility of informing the court of the basis for his motion and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which he believes demonstrate the absence of a genuine issue of material fact. See *Celotex*, 477 U.S. at 323. "[A] party opposing a summary judgment motion must inform the trial judge of the reasons, legal or factual, why summary judgment should not be entered." *Sanders v. Village of Dixmoor*, 178 F.3d 869, 870 (7th Cir. 1999), quoting *Liberles v. County of Cook*, 709 F.2d 1122, 1126 (7th Cir. 1983). "When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must — by affidavits or as otherwise provided in this rule — set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party." FED. R. CIV. P. 56(e)(2). "The nonmovant will successfully oppose summary judgment only when it presents definite, competent evidence to rebut the motion." *Vukadinovich v. Board of School Trustees*, 278 F.3d 693, 699 (7th Cir. 2002) (internal quotation and citation omitted).

3. The Sheriff defendants filed their motion for summary judgment on August 29, 2008. Because Colburn was not represented by counsel at that time (as is also the case now), the special notice required under *Lewis v. Faulkner*, 689 F.2d 100 (7th Cir. 1982), was provided. This notice is also required by Local Rule 56.1(h). Colburn did not respond to the Sheriff defendants' motion for summary judgment, despite having been given a prolonged but specific period of time in which to do so. He did, however, file his own motion for summary judgment on November 3, 2008. The Sheriff defendants filed a response to the Colburn motion for summary judgment on November 10, 2008. Colburn did not file a reply to that response, although he was given a specific period of time in which to do so. These items were brought into focus in the Entry of January 6, 2009 in which the court (1) granted Colburn's motion for extension of time — through January 20, 2009 — to reply to the response of the Sheriff defendants' to Colburn's motion for summary judgment, (2) overruled the Sheriff defendants' objection to Colburn's motion for enlargement of time, and (3) noted that the briefing of the Sheriff defendants' motion for summary judgment "to which the plaintiff has not responded, is now closed." The consequence of this sequence is that the Sheriff defendants have opposed Colburn's motion for summary judgment, while Colburn has not opposed the Sheriff defendants' motion for summary judgment.

4. Notwithstanding this unbalanced briefing status, both motions for summary judgment are pending and are ripe for resolution.

Courts often confront cross-motions for summary judgment because Rules 56(a) and (b) of the *Federal Rules of Civil Procedure* allow both plaintiffs and defendants to move for such relief. "In such situations, courts must consider each party's motion individually to determine if that party has satisfied the summary judgment standard." *Kohl v. Ass'n of Trial Lawyers of America*, 183 F.R.D. 475 (D. Md. 1998). Thus, in determining

whether genuine and material factual disputes exist in this case, the Court has considered the parties' respective memoranda and the exhibits attached thereto, and has construed all facts and drawn all reasonable inferences therefrom in the light most favorable to the respective non-movant. *Matsushita [Elec. Indus. Co. v. Zenith Radio Corp.,]* 475 U.S. 574 [(1986)].

Winforge, Inc. v. Coachmen Industries, Inc., 2008 WL 4098975, *9 (S.D. Ind. 2008).

5. A common point of departure for assessing each motion for summary judgment is that while Colburn was confined in the Jail, insofar as his claims in this case are concerned, he was a convicted offender. His claim of the denial of constitutionally adequate medical care is asserted pursuant to 42 U.S.C. § 1983.¹ "Section 1983 is not itself a source of substantive rights; instead it is a means for vindicating federal rights elsewhere conferred." *Ledford v. Sullivan*, 105 F.3d 354, 356 (7th Cir. 1997), citing *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979). Accordingly, "the first step in any [§ 1983] claim is to identify the specific constitutional right infringed." *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

6. Because Colburn was a convicted offender, his treatment and the conditions of his confinement will be evaluated under standards established by the Eighth Amendment's proscription against the imposition of cruel and unusual punishments. *Helling v. McKinney*, 509 U.S. 25, 31 (1993) ("It is undisputed that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment.").²

7. For an inmate to state a claim under 42 U.S.C. § 1983 for medical mistreatment or denial of medical care, the prisoner must allege "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs."

¹The complaint invokes only 42 U.S.C. § 1983 to vindicate the asserted violation of a federally secured right. The Sheriff defendants have nonetheless addressed the viability of a possible claim under Indiana law, although they do not suggest where in the pleadings or elsewhere in the case such a claim is asserted. "Pro se litigants are masters of their own complaints and may choose who to sue – or not to sue." *Myles v. United States*, 416 F.3d 551, 552 (7th Cir. 2005). The court may not rewrite a petition to include claims that are not presented. *Barnett v. Hargett*, 174 F.3d 1128 (10th Cir. 1999); *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993). The court does not find a claim under Indiana law to be asserted in the complaint.

²The complaint could also be read to assert a claim that Jail Commander Richards did not respond properly to Colburn's grievance. Such a claim would be a complete non-starter, however, and is not discussed further because Colburn had no substantive due process right to either that grievance procedure or a particular outcome of his administrative remedy request. *Grieverson v. Anderson*, 538 F.3d 763, 772 (7th Cir. 2008). Because Colburn had no expectation of a particular outcome of his grievances, there is no viable claim that can be vindicated through § 1983. *Juriss v. McGowan*, 957 F.2d 345, 349 n.1 (7th Cir. 1992) (without a predicate constitutional violation one cannot make out a prima facie case under § 1983).

Estelle v. Gamble, 429 U.S. 97, 106 (1976). Deliberate indifference exists only when an official "knows of and disregards an excessive risk to an inmate's health; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (construing *Estelle*).

Prison officials violate the Constitution if they are deliberately indifferent to prisoners' serious medical needs. A claim based on deficient medical care must demonstrate two elements: 1) an objectively serious medical condition, and 2) an official's deliberate indifference to that condition.

Williams v. Liefer, 491 F.3d 710, 714 (7th Cir. 2007)(internal citations omitted).³

8. As to the second element, deliberate indifference requires a showing that the official was actually aware of a serious risk yet failed to take any action. See *Whiting v. Marathon County Sheriff's Dep't*, 382 F.3d 700, 703 (7th Cir. 2004); *Jackson v. Illinois Medi-Car, Inc.*, 300 F.3d 760, 765 (7th Cir. 2002). A corollary to the element of deliberate indifference of a claim such as asserted here is that the defendant can only be liable for the actions or omissions in which he personally participated. *Sanville v. McCaughtry*, 266 F.3d 724, 734 (7th Cir. 2001). "[A]n official meets the personal involvement requirement when she acts or fails to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge and consent." *Black v. Lane*, 22 F.3d 1395, 1401 (7th Cir. 1994), quoting *Smith v. Rowe*, 761 F.2d 360, 369 (7th Cir. 1985) (citations and internal quotations omitted).

If a prisoner is under the care of medical experts . . . a non-medical prison official will generally be justified in believing that the prisoner is in capable hands. This follows naturally from the division of labor within a prison. Inmate health and safety is promoted by dividing responsibility for various aspects of inmate life among guards, administrators, physicians, and so on. Holding a non-medical prison official liable in a case where a prisoner was under a physician's care would strain this division of labor.

Spruill v. Gillis, 372 F.3d 218, 236 (3d Cir. 2004); see also *Hayes v. Snyder*, 546 F.3d 516, 527 (7th Cir. 2008) ("The policy supporting the presumption that non-medical officials are entitled to defer to the professional judgment of the facility's medical officials on questions of prisoners' medical care is a sound one.").

9. The motions for summary judgment pivot on this second element of deliberate indifference. Colburn's motion for summary judgment must be **denied**

³The Eighth Amendment standard of deliberate indifference is significantly higher than mere negligence, or even gross negligence. See *Farmer v. Brennan*, 511 U.S. 825, 835 (1994) ("deliberate indifference describes a state of mind more blameworthy than negligence").

because he has not shown through that motion that there is no genuine issue as to any material fact and that he is entitled to judgment as a matter of law. The Sheriff defendants' motion for summary judgment, on the other hand, must be **granted** because the undisputed facts show that the Sheriff defendants played no role in determining what medical treatment Colburn was to receive while at the Jail and did not impede the delivery of any medical services that were scheduled or found warranted. Absent evidence that creates a material issue of fact with respect to direct, personal involvement by these defendants in the treatment decisions for Colburn made by Jail medical personnel, the Sheriff defendants are entitled to judgment as a matter of law. See *Farmer v. Brennan*, 511 U.S. at 845 ("Whether one puts it in terms of duty or deliberate indifference, prison officials who act reasonably cannot be found liable under the Cruel and Unusual Punishments Clause.").

10. It has been explained that "summary judgment serves as the ultimate screen to weed out truly insubstantial lawsuits prior to trial." *Crawford-El v. Britton*, 118 S. Ct. 1584, 1598 (1998). This is a vital role in the management of court dockets, in the delivery of justice to individual litigants, and in meeting society's expectations that a system of justice operate efficiently. For the reasons explained in this Entry, the Sheriff defendants' motion for summary judgment (dkt 20) is **granted** and Colburn's motion for summary judgment (dkt 38) is **denied**.

11. The ruling on the motions for summary judgment in this Entry does not resolve all claims against all parties. No partial final judgment shall issue at this time as to the claims resolved in this Entry.

So ordered.

DAVID F. HAMILTON, Chief Judge
United States District Court

Date: _____

Distribution:

Dr. John Collier
P.O. Box 220
English, IN 47118

Nurse Mike Hopper
P.O. Box 220
English, IN 47118

Douglas Alan Hoffman
CARSON BOXBERGER
hoffman@carsonboxberger.com

Jordan William Washington Colburn
DOC #156366
New Castle Correctional Facility
1000 Van Nuys Rd.
New Castle, IN 47362