

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ANDRE MOTON,)	
)	
Plaintiff,)	
)	
v.)	No. 1:23-cv-01533-JMS-KMB
)	
J. SURGAY Officer,)	
BROWN Caseworker,)	
)	
Defendants.)	

Order Screening Complaint and Directing Further Proceedings

Plaintiff Andre Moton is a prisoner currently incarcerated at Pendleton Correctional Facility ("Pendleton"). He filed this civil action alleging that the defendants used excessive force against him. Because Mr. Moton is incarcerated, this Court must screen the complaint before service on the defendants. 28 U.S.C. § 1915A(a), (c).

I. Screening Standard

When screening a complaint, the Court must dismiss any portion that is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). To determine whether the complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Schillinger v. Kiley*, 954 F.3d 990, 993 (7th Cir. 2020). Under that standard, a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court construes *pro se* complaints liberally and holds them to a "less stringent

standard than formal pleadings drafted by lawyers." *Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017).

II. The Complaint

Mr. Moton names two defendants, Officer J. Surguy¹ and Caseworker Brown.

According to his complaint, on April 17, 2023, Mr. Moton was returning to his cellhouse from lunch and was trying to deliver some legal mail to his caseworker. Sgt. Surguy told Mr. Moton that he couldn't turn in his mail, and Mr. Moton told him that he had a pending deadline and that the counselor did not collect mail from the range often. Sgt. Surguy said if Mr. Moton "didn't lock in he would show him what he does to n*****s." Dkt. 2 at 3. The mentor on Mr. Moton's range asked Sgt. Surguy if he could assist in deescalating the situation, and as Mr. Moton began speaking with the mentor, Sgt. Surguy grabbed and punched Mr. Moton. Caseworker Brown began to spray Mr. Moton with OC spray, and Sgt. Surguy continued to hit Mr. Moton and put his fingers in Mr. Moton's throat, inhibiting his ability to breathe.

Mr. Moton was handcuffed and taken to medical and then the disciplinary building. An officer reviewed surveillance footage and determined Mr. Moton did nothing wrong.

Mr. Moton requests monetary damages.

III. Discussion of Claims

Mr. Moton's excessive force claims against the defendants **shall proceed as submitted**. The Court observes that this is not the only case pending before this Court in which Officer Surguy is a defendant based on allegations of excessive force and the use of offensive racial slurs. *See Aaron v. Surguy*, 2023 WL 6563385, *2 (7th Cir. Oct. 10, 2023) (remanding for trial because if a factfinder credited plaintiff's version of events "it could rationally find (based on Surguy's use of

¹ Mr. Surguy's last name is spelled "Surgay" in the caption. The **clerk is directed** to update the spelling to reflect his last name is Surguy.

a racial epithet) that he deployed the pepper spray only because of racial malice, and malice of any sort is never a legitimate use of force.").

IV. Service of Process

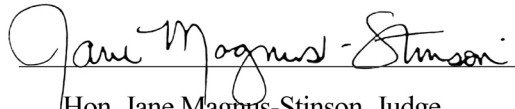
The **clerk is directed** pursuant to Fed. R. Civ. P. 4(c)(3) to issue process to defendants Officer J. Surguy and Caseworker Brown. Process shall consist of the complaint, dkt. [2], applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this Order.

The **clerk is directed** to serve the Indiana Department of Correction employees electronically and to update the spelling of the defendant's last name from "Surgay" to "Surguy."

Nothing in this Order prohibits the filing of a proper motion pursuant to Rule 12 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Date: 12/15/2023


Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

Distribution:

ANDRE MOTON
231926
PENDLETON - CF
PENDLETON CORRECTIONAL FACILITY
Electronic Service Participant – Court Only

Indiana Department of Correction:
Officer J. Surguy
Caseworker Brown
(Both at Pendleton Correctional Facility)