

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

SETH A. VILCHUCK,)	
)	
Plaintiff,)	
)	
v.)	No. 1:24-cv-00141-TWP-MJD
)	
J. D. BALLENGER Classification,)	
DENNIS REAGLE Warden,)	
RICHARD BROWN Director of DOC)	
Classification Southern District of Indiana,)	
HARMON Sgt.,)	
SUMMERS Officer,)	
A. TERRY Officer,)	
C. QUARRIER K-9 Officer,)	
D. MCDONALD DHB Officer,)	
MILLER DHB Sgt.,)	
INDIANA DEPARTMENT OF CORRECTIONS,)	
)	
Defendants.)	

**ORDER SCREENING AMENDED COMPLAINT
AND DIRECTING FURTHER PROCEEDINGS**

Plaintiff Seth Vilchuck is a prisoner currently incarcerated at Pendleton Correctional Facility ("PCF"). On January 22, 2024, he filed this civil action alleging a multitude of claims against various defendants. Dkt. 1. The Court screened that complaint and determined that it was subject to dismissal under Federal Rule of Civil Procedure 20 for misjoinder of unrelated claims. Dkt. 12. The Court granted Plaintiff until May 1, 2024 to file an amended complaint. *Id.* at p. 4. He has done so. Dkt. 13. Because the plaintiff is a "prisoner," this Court has an obligation to screen the amended 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 Amended Complaint

The amended complaint names as defendants: (1) Sgt. Austin Harmon; (2) K9 Officer Calvin Quarrier; (3) Officer Sommers; and (4) Officer Amanda Terry.

Plaintiff alleges that on December 28, 2023, at PCF, he was subjected to excessive force by Sgt. Harmon that included prolonged tasing, striking Plaintiff's head, and lifting Plaintiff off the ground by his restraints. It appears the force may have been used in response to Plaintiff's initial assault of Sgt. Harmon, but Plaintiff alleges that more force was used than was necessary and that it continued after he had been subdued. Also, after this initial assault, Officer Quarrier assaulted Plaintiff in retaliation for the initial incident involving Sgt. Harmon by forcibly removing Plaintiff's t-shirt in such a manner that it severely choked him and dislocated his right shoulder. Officers Sommers and Terry, who also wanted to retaliate against Plaintiff for the assault involving Sgt. Harmon, stood by and watched this second assault. Also, at some point on this same date Plaintiff was sprayed in the face with pepper spray and Officer Sommers did not allow him to take

a decontamination shower afterwards. Officer Terry also refused to allow Plaintiff to take a shower and did not obtain needed medical treatment for him. Plaintiff finally was able to take a shower about 11.5 hours after being sprayed.

Plaintiff seeks damages and an apology.

III. Discussion of Claims

Applying the screening standard to the factual allegations in the complaint, Eighth Amendment claims for excessive force **shall proceed** against Sgt. Harmon and K9 Officer Quarrier, and Officers Sommers and Terry for failing to intervene in Officer Quarrier's assault. Eighth Amendment deliberate indifference claims also **shall proceed** against Officers Sommers and Terry for refusing Plaintiff access to a decontamination shower after being pepper sprayed and against Officer Terry for not obtaining medical treatment for him.

Any claims related to the pepper spraying of Plaintiff **shall not proceed**. It is unclear from the amended complaint whether any of the named defendants were the one who sprayed Plaintiff. And, there are insufficient allegations that the pepper spraying was deployed sadistically or maliciously, rather than in a good faith attempt to restore order. *See Santiago v. Walls*, 599 F.3d 749, 757 (7th Cir. 2010) (When prison officials are accused of using excessive force, the key inquiry is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.").

IV. Conclusion and Service of Process

This summary of claims includes all of the viable claims identified by the Court. All other claims have been dismissed. If the plaintiff believes that additional claims were alleged in the complaint, but not identified by the Court, he shall have **through July 3, 2024**, in which to identify those claims.

The **clerk is directed** to terminate J.D. Ballenger, Dennis Reagle, Richard Brown, D. McDonald, Sgt. Miller, and the Indiana Department of Corrections as defendants on the docket. Plaintiff does not state any claims against these defendants in his amended complaint.

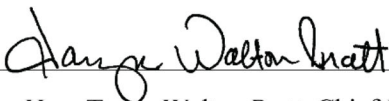
The **clerk is directed** pursuant to *Fed. R. Civ. P. 4(c)(3)* to issue process to defendants Sgt. Austin Harmon, K9 Officer Calvin Quarrier, Officer Sommers, and Officer Amanda Terry in the manner specified by Rule 4(d). Process shall consist of the amended complaint filed on April 5, 2024, dkt [13], 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.

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: 6/5/2024



Hon. Tanya Walton Pratt, Chief Judge
United States District Court
Southern District of Indiana

Distribution:

Electronic service to Indiana Department of Correction employees:

Sgt. Austin Harmon
K9 Officer Calvin Quarrier
Officer Sommers
Officer Amanda Terry
(All at Pendleton Correctional Facility)

SETH A. VILCHUCK
149912
PENDLETON - CF
PENDLETON CORRECTIONAL FACILITY
Electronic Service Participant – Court Only