

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LEONARD JORDAN,

Plaintiff,

v.

Case No: 3:23-cv-361

JEFFREY SMITH,

Defendant.

COMPLAINT

Plaintiff Leonard Jordan, by his attorneys, Strang Bradley, LLC, for his complaint against Defendant, states:

FACTS

1. It was a frigid morning on 19 December 2022. At 8:00 am, it was about -3° Fahrenheit with a windchill of about -16° in Black River Falls, WI.
2. Leonard Jordan, a prisoner at Jackson Correctional Institution, was working on a garbage crew tasked with picking up garbage and cardboard boxes.
3. Jordan went outside at about 8:10 am.
4. While Jordan's work crew was outside picking up garbage, they were told they would instead be shoveling snow.
5. Jordan wore prison clothes, a coat, black stretchy gloves, white cotton socks, and standard prison-issued, low-cut boots.

6. The shoveling team was under the supervision of Correctional Officer Jeffrey Smith.

7. At about 9:30 am, Jordan's feet and hands began to hurt.

8. He told CO Smith that his feet and hands were in pain.

9. CO Smith told him to keep shoveling.

10. Jordan complained to CO Smith three more times that his feet and hands were in pain and that he needed to go inside to warm up.

11. CO Smith refused to do anything about it. He did not offer warmer clothes. He did not allow Jordan to go inside and warm up.

12. Instead, he told Jordan, "The longer you stand around, the longer you are going to be out here."

13. Other prisoners on the crew begged CO Smith for a break to go inside and warm up. But CO Smith refused to allow any breaks.

14. Jordan could no longer stand and began falling to the ground, but another inmate grabbed him and held him up.

15. The other prisoners on the crew picked Jordan up and walked him to the door, where they were let inside.

16. Prison staff told them to wait and see if Jordan improved. They told them to wait 25 minutes.

17. After ten minutes, it was clear that Jordan needed immediate medical attention. Prison staff took Jordan to the Health Services Unit in a wheelchair.

18. Jordan was finally taken to the HSU at around 10:30 am.

19. A registered nurse in the HSU recorded that Jordan was in extreme pain, was crying, his skin was red, his feet were cold to the touch, and he was shivering.

20. Jordan was treated for frostbite and hypothermia.

21. The prison put Jordan on a 12-month work restriction.

22. Jordan's feet still feel hurt, and when he walks, he feels like he's on pins and needles.

23. His legs and feet are constantly cold.

24. Jordan also suffered and still suffers from emotional distress.

25. Jordan filed a grievance with the prison. His complaint was affirmed, and the affirmation was also affirmed.

26. Jordan appealed the decision, which was again affirmed.

27. Jordan properly and totally exhausted his administrative remedies.

28. The Wisconsin Department of Corrections has a policy regarding outdoor prisoner work in extremely cold conditions.

29. The policy, Division of Adult Institutions Policy 300.00.03, describes frostbite and hypothermia and explains warning signs for both. The policy also tells prison staff how to respond to the warning signs.

30. Under the policy, when the wind chill is between 0° and -15°, prison staff must provide prisoners a minimum of 10 minutes of warming time per hour spent outside.

31. Under the policy, when the wind chill is at or below -16°, prison staff must provide prisoners a minimum of 10 minutes of warming time per 10 minutes spent outside.

32. The Institution Complaint Examiner who reviewed Jordan's complaint concluded that the policy of 10 minutes of warming time per 10 minutes of work should have been applied on the morning of 19 December 2022.

33. The prison also has warmer jackets and boots for prisoners working outside in frigid weather.

34. CO Smith was aware of the prison policies regarding prisoners working outdoors in extremely cold weather.

35. Despite the extreme cold and Jordan's complaints, CO Smith did not offer Jordan warmer clothes or boots, did not allow Jordan to have a warming-up period, and refused to provide Jordan any help or treatment when Jordan began exhibiting signs of frostbite and hypothermia.

36. CO Smith falsely told the Institution Complaint Examiner that he had allowed the shoveling crew "two or three" warming periods on 19 December 2022.

37. Jordan worked outside on 19 December 2022 from 8:10 am to 10:15 am without a single warming-up break.

JURISDICTION AND VENUE

38. This lawsuit is brought under 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiff Jordan's rights as secured by the United States Constitution.

39. This Court has jurisdiction over federal claims under 28 U.S.C. § 1331.

40. Venue is proper under 28 U.S.C. § 1391(b)(2). The events giving rise to the claims asserted herein occurred within the judicial district.

PARTIES

41. Plaintiff Leonard Jordan is a resident of the State of Wisconsin and a prisoner at the Jackson Correctional Institution.

42. Defendant CO Jeffrey Smith is a correctional officer at the Jackson Correctional Institution.

43. Jeffrey Smith was employed as a correctional officer at the Jackson Correctional Institution at the time of this occurrence. Defendant CO Smith engaged in the conduct complained of while on duty, acting under the color of state law, ordinance, and/or regulation, and in the course and scope of his employment with the Wisconsin Department of Corrections. He is sued in his individual capacity.

COUNT 1:

42 U.S.C. § 1983 Claim for Failure to Provide Medical Attention

44. Plaintiff realleges the above paragraphs.

45. Plaintiff Jordan had a serious medical need. He was suffering from frostbite, hypothermia, and the effects of working outside in extremely cold conditions.

46. Defendant CO Smith was aware that Plaintiff Jordan had a serious medical need or strongly suspected that Plaintiff Jordan had a serious medical need but refused to confirm whether it was true.

47. Defendant CO Smith consciously failed to take reasonable measures to provide treatment for Plaintiff Jordan's serious medical needs when he refused to give Jordan warmer clothes, refused to offer any warming breaks, and refused to take Jordan to the Health Services Unit.

48. As a result of Defendant CO Smith's actions and inactions, Plaintiff Jordan suffered prolonged, unnecessary pain and suffered hypothermia and frostbite.

49. Defendant CO Smith acted under the color of law.

50. Defendant CO Smith thus violated Plaintiff Jordan's Eighth Amendment right to be free from cruel and unusual punishment.

WHEREFORE, pursuant to 42 U.S.C. §§ 1983 & 1988, Plaintiff demands actual or compensatory damages against Defendant CO Smith, the costs of this action, attorneys' fees, and such other further relief that the Court deems just and equitable. And because Defendant CO Smith acted maliciously, wantonly, or oppressively, Plaintiff demands punitive damages.

COUNT 2:
42 U.S.C. § 1983 Claim for Conditions of Confinement

51. Plaintiff realleges the above paragraphs.

52. Working outside in the extreme cold without warming-up breaks and adequate clothing subjected Plaintiff Jordan to a strong likelihood of serious harm, including frostbite and hypothermia.

53. Defendant CO Smith was aware of the strong likelihood that Plaintiff Jordan would be seriously harmed or strongly suspected facts showing a strong likelihood that Plaintiff Jordan would be seriously harmed but refused to confirm whether these facts were true.

54. Defendant CO Smith consciously failed to take reasonable measures to prevent the harm to Plaintiff Jordan from occurring.

55. Plaintiff Jordan would not have been harmed or would've suffered less harm if Defendant CO Smith had taken reasonable measures.

56. Defendant CO Smith acted under the color of law.

57. Defendant CO Smith thus violated Plaintiff Jordan's Eighth Amendment right to be free from cruel and unusual punishment.

WHEREFORE, pursuant to 42 U.S.C. §§ 1983 & 1988, Plaintiff demands actual or compensatory damages against Defendant CO Smith, the costs of this action, attorneys' fees, and such other further relief that the Court deems just and equitable. And because Defendant CO Smith acted maliciously, wantonly, or oppressively, Plaintiff demands punitive damages.

JURY DEMAND

Plaintiff hereby demands a trial by jury under FED. R. CIV. PRO. 38(b), on all issues so triable.

Respectfully submitted,

Dated: 31 May 2023,

/s/ R. Rick Resch
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