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United States District Court, N.D. Illinois, Eastern  
Division.

Orlandis BOLDEN, et al., Plaintiffs,  
v.  
Amy ZERNICKE, et al., Defendants.

No. 94 C 6203. | July 3, 1995.

**Opinion**

**MEMORANDUM OPINION AND ORDER**

ANN CLAIRE WILLIAMS, District Judge.

\*1 This matter is before the court on defendants' motion to dismiss and plaintiffs' motions to hold the case in abeyance and for appointment of counsel. For the reasons stated below, the abeyance and appointment of counsel motions are denied. The motion to dismiss is granted, in part with prejudice, and in part without prejudice.

**Background**

Plaintiffs Orlandis Bolden, Tony Williams and James Garland, all current or former inmates of Stateville Correctional Center in Joliet, have brought suit under 42 U.S.C. section 1983, alleging numerous violations of their constitutional rights by Stateville prison officials. Defendants moved to dismiss on March 13, 1995. Plaintiffs' response was due on April 10, 1995. On March 21, 1995, plaintiffs requested, and the court later granted an extension of time for the response until May 1, 1995. On May 2, 1995 one day after the response was due, plaintiff Bolden requested another extension. The court granted plaintiff a second extension until June 15, 1995. In granting the extension, the court warned that "[n]o further extensions will be granted and the court will rule on the motion with or without response from plaintiffs." On June 15, 1995, and again on June 23, 1995, Bolden moved to hold the case in abeyance and for appointment of counsel. The motions to hold the case in abeyance and for appointment of counsel are denied. As this court has noted, plaintiffs are experienced jailhouse lawyers and do not require the assistance of an attorney to file a meaningful response to the motion to dismiss. Moreover, the Stateville deadlock is not an adequate excuse for delay because not all plaintiffs are subject to the deadlock. The

court now turns to defendants' motion to dismiss.

**Standard of Review**

In considering a motion to dismiss, the court accepts the factual allegations contained in the complaint as true and construes them in the light most favorable to the plaintiff. *H.J. Inc. v. Northwest Bell Tel. Co.*, 492 U.S. 229, 249–50 (1989). A motion to dismiss tests the sufficiency of the complaint, not the merits of the suit. *Triad Assocs., Inc. v. Chicago Housing Auth.*, 892 F.2d 583, 586 (7th Cir.1989).

**Discussion**

As defendants note, plaintiffs' claims can be divided into six categories. The court will address each in turn.

**Placement within the Prison**

In paragraphs 39 to 52 of the complaint, Bolden challenges his placement in certain wings of the Stateville prison. Bolden, however, does not have a protected liberty interest in being assigned to a particular cell unit. *See Ramirez v. Turner*, 991 F.2d 351 (7th Cir.1993). Nor does he allege that he was placed in a particular wing of Stateville because of his membership in a protected class. The court therefore dismisses Bolden's claims regarding his placement within Stateville with prejudice for failure to state a claim upon which relief can be granted.

**AIDS**

The court agrees with defendants that their alleged failure to notify Bolden that his cellmate had AIDS (paras. 53–58) did not constitute cruel and unusual punishment under the Eighth Amendment. *Cf. Hoover v. Watson*, No. 94–179, 1995 U.S. Dist. LEXIS 6877 (D.Del. April 24, 1995). This claim is dismissed with prejudice.

**Conditions of Confinement**

\*2 The Eighth Amendment to the Constitution prohibits states from inflicting "cruel and unusual punishment" on the prisoners it confines. *Wilson v. Seiter*, 501 U.S. 294, 297 (1991). The Amendment applies not only to the sentence imposed on those convicted of crimes, but also to the treatment a prisoner receives while imprisoned and the conditions of confinement. *Id.*; *Helling v. McKinney*,

## **Bolden v. Zernicke, Not Reported in F.Supp. (1995)**

113 S.Ct. 2475 (1993). Prison officials must therefore “ensure that inmates receive adequate food, clothing, shelter and medical care.” *Farmer v. Brennan*, 114 S.Ct. 1970, 1976 (1994).

As the Supreme Court has repeatedly stated, however, “[t]he Constitution does not mandate comfortable prisons.” *Id.* (quoting *Rhodes v. Chapman*, 452 U.S. 337 (1981)). Conditions imposed on prisoners may be “restrictive and even harsh.” *Id.* at 1977. Therefore, in order to establish a cognizable claim under the Eighth Amendment, the plaintiff must first show that the deprivation at issue is, from an objective standpoint, sufficiently serious. *Wilson*, 501 U.S. at 298. The conditions of confinement satisfy this requirement if they are “incompatible with the evolving standards of decency that mark the progress of a maturing society,” *Estelle v. Gamble*, 429 U.S. 96, 102 (1976) (quoting *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir.1968)), or “result in the denial of the minimal civilized measure of life’s necessities.” *Farmer*, 114 S.Ct. at 1977 (quoting *Rhodes*, 452 U.S. at 347). Secondly, the plaintiff must show that prison officials were deliberately indifferent to the prisoner’s health needs. *Farmer*, 114 S.Ct. at 1977.

Plaintiffs base their constitutional claims on the following conditions:

- worms in their drinking water
- no ventilation
- severe plumbing problems
- beds held together with bedsheets that rip apart, injuring prisoners
- food on walls and floors of cells
- unpleasant odors

(Compl. paras. 59–60, 66–67, 73–77, 82–86). When taken together, and read in the light most favorable to the non-moving parties, these alleged conditions may be objectively serious enough to state a claim under the Eighth Amendment. In particular, the court notes the allegations regarding worms in the prisoners’ drinking water. The court therefore denies defendants’ motion to dismiss these claims with prejudice.

### ***Inadequate Medical Care***

Plaintiffs Bolden’s and Garland’s claims based on inadequate medical treatment (paras. 61–64, 78–81) are dismissed with prejudice. To establish a constitutional claim based on defendants’ alleged failure to provide proper medical care, plaintiffs must show that defendants acted with “deliberate indifference” to their “serious

medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 103–05 (1976). Here, plaintiffs fail to show the requisite deliberate indifference. As defendants point out, Bolden claims that five minutes after he fell a correctional officer came to his cell in assistance, and that fifteen minutes later, he was attended to by two medical technicians, and was then taken to the hospital. Plaintiff Garland, for his part, admits that he is currently receiving medication to control the pain in his back. Although he may not be satisfied with the chosen treatment, a mere disagreement regarding the level or type of care provided does not give rise to an Eighth Amendment violation. Plaintiffs’ medical treatment claims are dismissed with prejudice.

### ***Derogatory Language***

\*3 In paragraphs 89–91 of the complaint, Bolden claims that defendant Zernicke and another correctional officer laughed at him and called him a “nigger.” The court agrees with plaintiff that the use of racial epithets, especially by state officers is reprehensible. Nevertheless, given the isolated nature of the alleged incident, and the lack of any accompanying physical violence or threat of violence, the court finds that these claims are legally insufficient to state a constitutional claim, and dismisses them with prejudice.

### ***Retaliation***

Plaintiff Bolden peppers his complaint with a series of vague claims of retaliation against him by prison officials. Critically, Bolden has failed to allege “a chronology of events from which retaliation may plausibly be inferred,”<sup>1</sup> choosing instead to rest his claims on the mere allegation of the ultimate act of retaliation. As the Seventh Circuit has held, significantly more is required. *Cain v. Lane*, 857 F.2d 1139 (7th Cir.1988). Bolden’s retaliation claims are dismissed with prejudice.

### ***Dismissal without Prejudice***

Only plaintiffs’ conditions of confinement claim remains. As noted above, plaintiffs have asked the court to hold this case in abeyance, presumably because of the lock-down at Stateville prison. While recognizing the difficulties facing plaintiffs as a result of the lockdown, the court believes it would be unfair to defendants to leave the matter unresolved for an indefinite period, especially in light of the relief sought. As an accommodation to plaintiffs, the court hereby dismisses the remaining conditions of confinement claim *without prejudice* and *with leave to reinstate in 90 days*. At any time within the next 90 days, plaintiffs may reinstate their conditions of confinement claims before this court simply by filing a written request for reinstatement.

***Conclusion***

For the reasons stated above, plaintiffs' abeyance and appointment of counsel motions are denied. Defendants' motion to dismiss is granted, in part with prejudice, and in part without prejudice. Plaintiffs are granted leave to reinstate their conditions of confinement claims within 90 days.

Footnotes

<sup>1</sup> *Cain v. Lane*, 857 F.2d 1139 (7th Cir.1988).

**JUDGMENT IN A CIVIL CASE**

IT IS ORDERED AND ADJUDGED that pursuant to memorandum opinion and order defendants motion to dismiss is granted, in part with prejudice, and in part without prejudice.