

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MICHAEL K. MATTOX,

Plaintiff,

v.

CASE NO. 07-3322-SAC

SECRETARY OF CORRECTIONS
ROGER WERHOLTZ, et al.,

Defendants.

O R D E R

On January 9, 2008, this court entered an Order screening the complaint filed herein and finding the personal participation of defendant Werholtz was not adequately alleged, and the allegations in the complaint were not sufficient to state a federal constitutional claim of cruel and unusual punishment. Plaintiff was given time to file a Supplement curing these deficiencies.

Plaintiff filed a "Supplement to Complaint" in which he argues that defendant Werholtz is liable because he "is responsible for his employee's mishaps" and because his employees "are just doing what they were taught" by him. However, he cites no prison policy or regulation, which resulted in illegal acts against him. The court concludes that plaintiff has not alleged adequate personal participation in unconstitutional acts on the part of defendant Werholtz.

Plaintiff also argues in his Supplement that his "mental pain is sufficiently serious" and "all defendants acted with a

sufficiently culpable state of mind" and "with deliberate indifference." These conclusory statements do not amount to any additional facts and do nothing to support plaintiff's claim of cruel and unusual punishment due to his being written up for lewd acts because he was nude while sleeping. Moreover, plaintiff is legally incorrect that his conclusory statement of mental anguish alone is a sufficient basis for his complaint seeking billions of dollars in damages. 42 U.S.C. § 1997e(e) specifically provides:

No Federal civil action may be brought by a prisoner . . . for mental or emotional injury suffered while in custody without a prior showing of physical injury."

The court concludes that this action must be dismissed for the reasons stated in the court's Order of January 9, 2008, and herein.

IT IS THEREFORE ORDERED that this action is dismissed and all relief is denied for failure to allege facts that support of a federal constitutional claim.

IT IS SO ORDERED.

Dated this 21st day of March, 2008, at Topeka, Kansas.

s/Sam A. Crow
U. S. Senior District Judge