

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

WILLIAM MITCHELL,

Plaintiff,

v.

CASE NO. 08-3111-SAC

**SGT. FREEMAN,
et al.,**

Defendants.

O R D E R

This civil rights complaint, 42 U.S.C. § 1983, was filed by an inmate of the Douglas County Jail, Lawrence, Kansas (DCJ). Plaintiff sues "Sgt. Freeman" an "officer" of DCJ, and "Cpl. David Oaks" a "corrections supervisor" at the DCJ. As the factual basis for his complaint, plaintiff alleges that on November 15, 2007, he was in protective custody and in the "pod dayroom" watching television when both defendants entered the pod and "let a violent inmate out of his cell un-escorted" in violation of DCJ policy, that he complained to both officers and informed them of the personal threat to him, but they walked out of the pod, and within five minutes he was attacked and beaten. He further alleges that the inmate who committed the attack was not supposed to be out of his cell without restraints and three escort officers because he was violent and known to attack other inmates and staff without cause.

Plaintiff asserts he was subjected to cruel and unusual punishment in violation of the Eighth Amendment, and denied equal protection of the law in violation of the Fourteenth Amendment. He seeks "payment of medical bills/mental health treatment" necessitated by the attack, and money damages for "pain and

suffering."

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

Plaintiff has filed an Application to Proceed Without Prepayment of Fees (Doc. 2), and supporting documentation. The court takes judicial notice of Mitchell v. McGovern, Case No. 07-3318 (D.Kan. May 13, 2008), in which plaintiff was granted leave to proceed without prepayment of fees, is currently making partial payments to the court, and which was voluntarily dismissed, without prejudice, upon plaintiff's motion. The court finds the instant action appears to be based on the same alleged assault as plaintiff's prior action. The court further finds that plaintiff's motion should be granted, and that he should not be assessed an additional filing fee in this action. However, plaintiff remains obligated to pay the remainder of the full filing fee due in Case No. 07-3318, and must continue to cooperate in making payments in that case until the filing fee has been paid in full.

SCREENING

Because Mr. Mitchell is a prisoner, the court is required by statute to screen his complaint and to dismiss the complaint or any portion thereof that is frivolous, fails to state a claim on which relief may be granted, or seeks relief from a defendant immune from such relief. 28 U.S.C. § 1915A(a) and (b). Having screened all materials filed, the court finds a responsive pleading is required.

IT IS THEREFORE ORDERED that plaintiff's Motion to Proceed

Without Prepayment of Fees (Doc. 2) is granted, and plaintiff shall not be assessed an additional filing fee in this action, but remains obligated to pay the filing fee through payments as ordered in Case No. 07-3318.

IT IS FURTHER ORDERED that the clerk of the court shall prepare summons and waiver of service forms pursuant to Rule 4(d) of the Federal Rules of Procedure, to be served on defendants by a United States Marshal or a Deputy Marshal at no cost to plaintiff absent a finding by the court that plaintiff is able to pay such costs.

IT IS FURTHER ORDERED that the screening process under 28 U.S.C. § 1915A having been completed, this matter is returned to the clerk of the court for random reassignment pursuant to D.Kan.R. 40.1.

Copies of this Order shall be transmitted to plaintiff, to defendants, and to the Finance Officer at the institution where plaintiff is currently incarcerated.

IT IS SO ORDERED.

Dated this 30th day of May, 2008, at Topeka, Kansas.

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