IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JUSTIN JADE COLLINS,

Plaintiff,

v. **CASE NO. 17-3189-SAC**

JOE NORWOOD, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is before the Court on Defendants' motion to dismiss (Doc. 25). Plaintiff has filed no response to the motion. For the reasons described herein, Defendants' motion to dismiss is granted.

I. Background

Mr. Collins served as a confidential source in a wide-spread corruption investigation at the Lansing Correctional Facility in Lansing, Kansas ("LCF") which occurred in 2015. Doc. 1-1 at 16. He was transferred away from LCF on October 8, 2015. *See* KASPER Profile for Plaintiff, Doc. 21-1 at 3. Then, at some point, his identity as a confidential informant was leaked by an unidentified KDOC employee to security threat groups ("STGs") at LCF implicated in the corruption investigation and was revealed in a LCF employee's civil service appeal of administrative action taken based on the investigation. Doc. 1 at 2. Mr. Collins was transferred back to LCF on August 22, 2017. *See* KASPER Profile for Plaintiff, Doc. 21-1 at 3. The next day, he met with Ron Erwin, Special Agent Supervisor for the Enforcement, Apprehension and

Investigative Unit at LCF, and reported he had been labeled a snitch by his fellow inmates and "green lighted" for attack by the STGs. Doc. 1-1 at 16. On August 24, 2017, Mr. Erwin prepared an Administrative Segregation Report recommending restrictive housing for Mr. Collins until he could be approved for transfer out of state pursuant to interstate compact. *Id.* Plaintiff subsequently made repeated requests for the out of state transfer, but he had not received a response to his requests at the time he filed this lawsuit on October 30, 2017. Doc. 1-1 at 2-4, 6, 9, 11-14. Plaintiff was transferred to a detention facility in Missouri on November 15, 2017. *See* KASPER Profile, Doc. 21-1 at 3.

II. Complaint

Plaintiff's complaint alleged that Defendants violated his Eighth Amendment rights by failing to respond appropriately to the leaking of his identity as a confidential informant. Mr. Collins alleged he was not safe in long term protective custody and furthermore should not be required to spend the remainder of his confinement (approximately three more years) in segregation. He sought injunctive relief in the form of an order directing his transfer to an out of state prison, as well as punitive damages in the amount of $1 million.

III. Motion to Dismiss

In their motion to dismiss (Doc. 25) and memorandum in support (Doc. 26), Defendants argue Plaintiff's complaint should be dismissed for a number of reasons. First, they point out that Plaintiff received the primary relief he was requesting, transfer out of state, thus making his complaint moot and depriving the Court of jurisdiction. They also argue the Eleventh Amendment bars claims against Defendants in their official capacities, and that Defendants are entitled to qualified immunity as well because Plaintiff has not demonstrated that any defendant acted with

deliberate indifference. Last, Defendants claim the lack of personal participation by the named defendants in the alleged constitutional violation requires dismissal.

IV. Standard

Federal Rule of Civil Procedure 12(b)(6) allows dismissal of a complaint where the facts alleged fail to state a claim to relief "that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "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." *Id.* at 678. All well-pleaded factual allegations in the complaint are accepted as true and viewed in the light most favorable to the plaintiff for purposes of determining whether the complaint states a plausible claim for relief. *Id*.; *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009). The Court's job is to assess whether the plaintiff's complaint, along with any attached exhibits, is legally sufficient to state a claim for which relief may be granted. *Smith*, 561 F.2d at 1098.

In this case, the Court ordered the Kansas Department of Corrections to file a *Martinez* report. For purposes of a motion to dismiss, any factual allegations contained in the *Martinez* report that conflict with Plaintiff's factual allegations cannot be considered by the Court.

V. Discussion

A. Mootness of claim for injunctive relief

Defendants argue that the primary relief Plaintiff requested in his complaint was an injunction ordering his transfer to an out of state prison. Since Plaintiff has received the requested transfer, his claim is moot. The Court agrees. Plaintiff's claim for injunctive relief became moot when he was transferred to a facility in Missouri, and that claim must be dismissed. *See Cleveland v. Martin*, 590 F. App'x 726, 729 (10th Cir. 2014); *Chafin v. Chafin*, 568 U.S. 165, 172 (2013).

Plaintiff also requests "monetary/punitive damages" in the amount of $1,000,000. The Prison Litigation Reform Act (PLRA) provides in pertinent part that "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e). Plaintiff does not allege that he suffered any physical injury, but the Tenth Circuit has held that the PLRA does not bar recovery of punitive damages or nominal damages. *See Searles v. Van Bebber*, 251 F.3d 869, 881 (10th Cir. 2001)*; Perkins v. Kansas Dep't of Corrs.,* 165 F.3d 803, 808 n.6 (10th Cir. 1999). Therefore, the Court must consider whether Plaintiff's claim for punitive damages may proceed.

B. Eleventh Amendment Immunity

The State of Kansas and its agencies, such as the KDOC, are absolutely immune to suit for money damages under the Eleventh Amendment. Consequently, suits against the State and its agencies are barred, absent consent, regardless of the relief sought. *Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993). Eleventh Amendment immunity applies not only to suits against states and state agencies, but also to damage suits brought against state officials in their official capacities. *Hill v. Kemp*, 478 F.3d 1236, 1255-56 (10th Cir. 2007); *Ellis v. Univ. of Kan. Med. Ctr.*, 163 F.3d 1186, 1196 (10th Cir. 1998).

Plaintiff's claim for damages against Defendants is barred insofar as he is suing them in their official capacities. *Allen v. Zaravas*, 474 F. App'x 741, 743-44 (10th Cir. 2012). Plaintiff's official capacity claims are hereby dismissed.

C. Qualified Immunity

The doctrine of qualified immunity "protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional

rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal quotation and citation omitted). To defeat a claim of qualified immunity, a plaintiff must show both: "(1) that the defendant's conduct violated a constitutional or statutory right, and (2) that the law governing the conduct was clearly established at the time of the alleged violation." *Eaton v. Meneley*, 379 F.3d 949, 954 (10th Cir. 2004). If a plaintiff fails to demonstrate either part of the inquiry, the defendant is entitled to qualified immunity. *Id.*; *Medina v. Cram*, 252 F.3d 1124, 1128 (10th Cir. 2001).

The Court finds that Plaintiff has failed to state a claim that any defendant violated his constitutional rights. Plaintiff essentially alleges that Defendants violated his Eighth Amendment rights by being deliberately indifferent to a serious risk of harm from his fellow inmates. Prison officials have a duty under the Eighth Amendment "to protect prisoners from violence at the hands of other prisoners." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). However, the failure of a prison official to meet that duty only rises to the level of a constitutional violation if the evidence shows the defendants acted with "wanton or obdurate disregard for or deliberate indifference to" the protection of prisoners' lives. *Harris v. Maynard*, 843 F.2d 414, 416 (10th Cir. 1988); *Northington v. Jackson*, 973 F.2d 1518, 1525 (10th Cir. 1992).

The test for deliberate indifference has both an objective and a subjective component. *Martinez v. Beggs*, 563 F.3d 1082, 1088 (10th Cir. 2009); *Sealock v. Colorado*, 218 F.3d 1205, 1209 (10th Cir. 2000). "The objective component of the test is met if the 'harm suffered rises to a level sufficiently serious to be cognizable under the Cruel and Unusual Punishment Clause' of the Eighth Amendment." *Martinez*, 563 F.3d at 1088 (quoting *Mata v. Saiz*, 427 F.3d 745, 752–53 (10th Cir. 2005)). "To prevail on the subjective component, the prisoner must show that the defendants 'knew he faced a substantial risk of harm and disregarded that risk, by failing to take

reasonable measures to abate it.'" *Callahan v. Poppell*, 471 F.3d 1155, 1159 (10th Cir. 2006) (quoting *Kikumura v. Osagie*, 461 F.3d 1269, 1293 (10th Cir. 2006)).

Applying the test for deliberate indifference to Plaintiff's case, the Court finds Plaintiff has failed to meet his burden under the subjective component because he fails to show that Defendants disregarded the risk of harm to him. When Plaintiff returned to LCF in August of 2017, he was kept in restricted housing for his protection and, within a day, the process to transfer him out of state pursuant to interstate compact was begun. While the transfer had not occurred by October 30, 2017, when Plaintiff filed this lawsuit, it did occur on November 15, 2017. Defendants only have a duty to take *reasonable* measures to protect prisoners from harm; they are not required to guarantee total safety. *Farmer*, 511 U.S. at 832; s*ee Berry v. City of Muskogee*, 900 F.2d 1489, 1499 (10th Cir. 1990). "[P]rison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted. A prison official's duty under the Eighth Amendment is to ensure 'reasonable safety,' a standard that incorporates due regard for prison officials' unenviable task of keeping dangerous men in safe custody under humane conditions." *Farmer*, 511 U.S. at 844-45 (internal quotation marks omitted). Plaintiff's complaint shows prison officials did not simply turn a blind eye to his situation. The Court cannot find Plaintiff has stated a claim that Defendants acted with deliberate indifference. Rather, it appears they fulfilled their duty to ensure Plaintiff "reasonable safety." *See id.*

It is worth noting that this is not a case where the plaintiff is bringing a claim based on the disclosure of his name as a confidential informant. Each of Plaintiff's three counts is based on alleged deficiencies in the named defendants' response to his identification as a confidential informant. This distinguishes Plaintiff's situation from cases which have found that prison staff

labeling a prisoner a "snitch" or otherwise informing other prisoners that he cooperated with law enforcement constitutes deliberate indifference. *See, e.g., Benefield v. McDowall*, 241 F.3d 1267, 1271 (10th Cir. 2001).

Because the Court finds that Defendants' conduct did not violate Plaintiff's constitutional rights, Defendants are entitled to qualified immunity. *See Eaton*, 379 F.3d at 954. Moreover, Plaintiff has failed to state a claim on which relief may be granted. Plaintiff's complaint must be dismissed.

IT IS THEREFORE ORDERED Defendants' motion to dismiss (Doc. 25) is **GRANTED**. The action is hereby dismissed for failure to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that Defendants' motion to stay discovery (Doc. 27) is denied as moot.

IT IS SO ORDERED.

DATED: This 28th day of June, 2018, at Topeka, Kansas.

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