

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

JOSEPH JOHN SHIPPS,

Plaintiff,

v.

CASE NO. 21-3223-SAC

**DAVID GROVES,
Sheriff, Cherokee County Sheriff's Department, et al.,**

Defendants.

MEMORANDUM AND ORDER

This matter is a civil rights action. Plaintiff is a pretrial detainee at the Cherokee County Jail in Columbus, Kansas ("CCJ"). By order dated December 21, 2021 (Doc. 9; "MOSC"), the Court directed Plaintiff to show cause why his Complaint should not be dismissed for failure to state a claim. Plaintiff filed a response to the MOSC (Doc. 10), an objection to the MOSC (Doc. 11), and an Amended Complaint (Doc. 12). Before the Court for screening is Plaintiff's Amended Complaint filed on January 18, 2022. The Court's screening standards are set forth in detail in the MOSC.

Plaintiff alleges in his Amended Complaint (ECF No. 12) that Defendants are violating his Fourteenth Amendment rights because they "refuse to test or quarantine infected detainee or exposed detainees with Covid-19, nor do they follow any CDC guidelines for infectious diseases to stop the spread of Covid-19." He further claims Defendants charge inmates for COVID tests to discourage testing and complains CCJ receives inmates from Sedgwick County who are infected. Plaintiff alleges that he reported to Jailer Jarrett that he had symptoms of COVID-19 on August 5, 2021. He was not tested or considered presumptively positive. Plaintiff remained in the general

population in C-pod with a Sedgwick County detainee who was sick but was not seen by medical staff or tested for COVID-19. On August 10, 2021, Plaintiff was taken to the Columbus Clinic and tested positive for COVID-19. He was then placed in a segregation cell. On August 12, 2021, he was seen by Nurse Huffman at the CCJ. She refused to give him breathing treatments or a chest x-ray. Eight to ten days later, Plaintiff was moved to E-pod to quarantine. He alleges he did not eat for 14 days due to lack of appetite. On September 7, 2021, he got an on-site x-ray.

Plaintiff asserts that Advance Correctional and its staff ignored his serious illness, leaving him to suffer in extraordinary pain, “letting nature take its course.” He further asserts that Sheriff Groves and Captain Tippie are aware that the Sedgwick County Jail is constantly infected with COVID-19 yet they suppress all testing of the detainees that they accept from Sedgwick County. Moreover, Plaintiff alleges that the defendants “refuse to take any precautions to prevent the spread [of COVID-19] at CCJ.”

Plaintiff claims that Defendant violated his Eighth and Fourteenth Amendment rights. He names as defendants David Groves, Sheriff of Cherokee County, Kansas; Advance Correctional Health Care, medical provider at the CCJ; Michelle Tippie, Captain; Nurse Huffman; and Nurse Gina. Plaintiff seeks damages of \$4 million, as well as the following injunctive relief: full hospital testing and care for his COPD; prohibit the CCJ from taking detainees from other counties until the pandemic is over; require the CCJ to reduce the population to half capacity and to house detainees without cellmates; require the CCJ to provide masks, sterilization, hand sanitizer, and COVID-19 tests to every inmate and staff member who enters or re-enters the facility; and prohibit the CCJ from holding inmates with chronic illnesses and instead require they be released on an alternate means of bond under house arrest.

In his response to the MOSC, Plaintiff argues that the MOSC does not explain how the defendants' actions of allowing infectious diseases to spread is "appropriate." He alleges that the Court is saying that it is appropriate and part of ordinary prison life for an infectious disease to spread, that Defendants have no obligation to contain or stop diseases from spreading, and that Defendants have no obligation to provide testing for COVID, to quarantine infected inmates, or to take other measures. Leaving Shipps and his cellmate in open general population with COVID and not providing prompt treatment or testing is not reasonable after being informed for 5 days. Plaintiff states, "Any Court will agree the allowance of a jail or prison to spread infectious diseases is a constitutional violation and clearly states a claim for deliberate indifference."

The mere fact that Plaintiff became infected with COVID-19 while at the CCJ does not support an Eighth Amendment claim. Every person in the United States, whether in a detention facility or not, has faced COVID-19 exposure. However, Plaintiff's allegation that the defendants refused to take any precautions to prevent the spread of COVID-19 is troubling.

The Court finds that the proper processing of Plaintiff's claims cannot be achieved without additional information from appropriate officials of the CCJ. *See Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978); *see also Hall v. Bellmon*, 935 F.2d 1106 (10th Cir. 1991). Accordingly, the Court orders the appropriate officials to prepare and file a *Martinez* Report. Once the report has been received, the Court can properly screen Plaintiff's claims under 28 U.S.C. § 1915.

IT IS THEREFORE ORDERED BY THE COURT that:

- (1) Officials responsible for the operation of the CCJ are directed to undertake a review of the subject matter of the Complaint:
 - a. To ascertain the facts and circumstances;

b. To consider whether any action can and should be taken by the institution to resolve the subject matter of the Complaint; and

c. To determine whether other like complaints, whether pending in this Court or elsewhere, are related to this Complaint and should be considered together.

(2) Upon completion of the review, a written report shall be compiled which shall be filed with the Court **by May 15, 2022** and served on Plaintiff. The CCJ officials must seek leave of the Court if it wishes to file certain exhibits or portions of the report under seal or without service on Plaintiff. Statements of all witnesses shall be in affidavit form. Copies of pertinent rules, regulations, official documents, and, wherever appropriate, the reports of medical or psychiatric examinations shall be included in the written report. Any recordings related to Plaintiff's claims shall also be included.

(3) Authorization is granted to the officials of CCJ to interview all witnesses having knowledge of the facts, including Plaintiff.

(4) No answer or motion addressed to the Amended Complaint shall be filed until the *Martinez* Report required herein has been prepared. If the Complaint survives screening, the Court will enter a separate order for service that sets an answer deadline.

(5) Discovery by Plaintiff shall not commence until Plaintiff has received and reviewed Defendant's answer or response to the Complaint and the report ordered herein. This action is exempted from the requirements imposed under Fed. R. Civ. P. 26(a) and 26(f).

Copies of this order shall be transmitted to Plaintiff, to Defendants, and to the Cherokee County Attorney.

IT IS SO ORDERED.

Dated April 15, 2022, in Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
SENIOR U. S. DISTRICT JUDGE