UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 91-7137

JOE E. GRISSOM,

Plaintiff-Appellee-
Cross-Appellant,

versus

PAT PATTERSON, Individually and in his official capacity as Sheriff of Monroe County and SAMMY MCNEEL, Individually and in his official capacity as Sheriff of Clay County,

Defendants-Appellants-
Cross-Appellees,

and

LEONARD FAULKNER, ET AL.,

Defendants-Cross-Appellees.

****

No. 92-7244

JOE E. GRISSOM,

Plaintiff-Appellee,
Cross-Appellant,

versus

PAT PATTERSON, Individually and in his Official Capacity as Sheriff of Monroe County, ET AL.,

Defendants,

PAT PATTERSON, Individually, PAT PATTERSON, in his Official Capacity as Sheriff of Monroe County, Mississippi, SAMMIE McNEEL,

Individually and SAMMY McNEEL, in his Official Capacity,

Defendants-Appellants, Cross-Appellees.

Appeal from the United States District Court for the Northern District of Mississippi (EC83-340-B-D & CA-EC83-340-B-D)

(December 27, 1993)

Before EMILIO M. GARZA, DeMOSS, Circuit Judges, and ZAGEL,[*] District Judge.

EMILIO M. GARZA, Circuit Judge:[**]

Joe Grissom brought a civil rights action contesting, *inter alia,* the conditions of his confinement during his incarceration at the Monroe County Jail in Mississippi. Sheriff Sammy McNeel of Clay County, Mississippi, and Sheriff Pat Patterson of Monroe County, Mississippi, appeal the judgment entered for Grissom, and Grissom cross-appeals. For the reasons set forth below, we affirm in part, and reverse and render in part.

I

In 1981, Grissom was convicted of stealing a soybean cart in Clay County, Mississippi.[1] He was incarcerated in the Monroe

---

[*] District Judge of the Northern District of Illinois, sitting by designation.

[**] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

[1] Sheriff McNeel headed the investigation which led to Grissom's arrest.

County Jail for approximately sixteen months until his conviction was overturned by the Mississippi Supreme Court. During his time at the Monroe County Jail, Grissom allegedly suffered several constitutional injuries which formed the basis for his civil rights action under 42 U.S.C. § 1983 (1988).

After being released from jail, Grissom filed a § 1983 suit against Sheriff McNeel, in his official and individual capacities; Sheriff Patterson, in his official and individual capacities; and the Monroe County Board of Supervisors in its official capacity. Grissom claimed that the defendants were responsible for the physical abuse he sustained from other inmates,[2] for the denial of his right of access to the courts, and for the inadequate living conditions at the jail, including the lack of proper medical care, food, exercise opportunities, clothing, and bedding.[3] After the presentation of the evidence, the magistrate judge granted a judgment as a matter of law[4] for the Monroe County Board of Supervisors in its official capacity. The magistrate judge also granted a judgment as a matter of law for Sheriff McNeel in both his official and individual capacities on all claims except the physical abuse claims.

---

[2] Grissom claimed that Sheriff McNeel either directed inmates to physically abuse him or failed to protect him from such abuse.

[3] Grissom's other claims))e.g., that he was placed in a cell with a homosexual and that he was denied visitation privileges))were not submitted to the jury and are not relevant to this appeal.

[4] The magistrate judge actually used the term "directed verdict." Because a directed verdict is now referred to as a judgment as a matter of law, *see* Fed. R. Civ. P. 50 (effective December 12, 1991), we use the latter convention for the remainder of this opinion.

The jury returned a verdict against Sheriff McNeel for $845,000.00 in actual damages and $84,500.00 in punitive damages. The jury returned a verdict against Sheriff Patterson for $850,000.00 in actual damages and $85,000.00 in punitive damages. The magistrate entered an amended judgment in accordance with the jury verdict, from which all parties timely appealed.[5]

II

Sheriff McNeel

Sheriff McNeel contends that the magistrate judge erred in denying his motion for judgment as a matter of law on Grissom's claims that McNeel either directed inmates to physically abuse Grissom or failed to protect Grissom from such abuse. In an appeal from the denial of a motion for judgment as a matter of law, we must consider "all of the evidence . . . in the light and with all reasonable inferences most favorable to the party [which] opposed . . . the motion."[6] To reverse the magistrate judge's denial of a motion for judgment as a matter of law, "the facts and inferences [must] point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict."[7] If, however, there exists "evidence of such quality and weight that reasonable and fair-minded men in the

---

[5] The amended judgment included an award of reasonable attorney's fees to the prevailing party.

[6] *Boeing Co. v. Shipman,* 411 F.2d 365, 374 (5th Cir. 1969) (en banc).

[7] *Id.*

exercise of impartial judgment might reach different conclusions,"[8] we must affirm the lower court's denial of a motion for judgment as a matter of law.

The evidence at trial demonstrated the following: that Sheriff McNeel had threatened Grissom several months prior to Grissom's incarceration at the Monroe County Jail; that the inmates responsible for abusing Grissom were from Clay County))i.e., the same county as Sheriff McNeel; that McNeel sometimes spoke with these inmates when he visited the Monroe County Jail; and that these inmates believed that Sheriff McNeel was in a position to influence their parole and leave decisions. Although one could infer from this evidence that Sheriff McNeel had the opportunity to act upon his dislike for Grissom, this evidence is insufficient as a matter of law to support a finding that Sheriff McNeel actually directed inmates to abuse Grissom. Such a finding would amount to nothing more than mere speculation.[9] Because "[a] mere scintilla of evidence is insufficient to present a question for the jury,"[10] we conclude that the magistrate judge erred in not granting McNeel's motion for judgment as a matter of law on this claim.[11]

---

[8] *Id.*

[9] *See McConney v. City of Houston,* 863 F.2d 1180, 1186 (5th Cir. 1989) ("While a verdict may be sustained by `reasonable inferences' from the evidence as a whole, plainly unreasonable inferences or those which amount to mere speculation or conjecture do not suffice.").

[10] *Shipman,* 411 F.2d at 374.

[11] Grissom also testified that one of his abusers had stated on several occasions that he was acting pursuant to Sheriff McNeel's instructions. This testimony was excluded as hearsay. After reviewing the record, we conclude that the magistrate judge did not abuse his discretion in making this evidentiary ruling.

We further conclude that a reasonable juror could not have found that Sheriff McNeel's alleged failure to protect Grissom from abuse constituted an injury actionable under § 1983. A failure-to-protect claim under § 1983 presupposes a chargeable duty to protect inmates from attacks by other inmates.[12] Because Grissom was, at the time of his injuries, an inmate at the Monroe County Jail, Sheriff McNeel of Clay County had at least no statutory duty to protect Grissom from abuse from other inmates.[13] Since there existed no statutory duty on the part of Sheriff McNeel to protect Grissom, any failure to do so could not have resulted in an injury actionable under § 1983.[14] We therefore hold that the magistrate judge erred in denying Sheriff McNeel's motion for judgment as a matter of law on Grissom's claims that McNeel either directed inmates to physically abuse Grissom or failed to protect him from

---

[12] *See, e.g., Johnston v. Lucas,* 786 F.2d 1254, 1258-60 (5th Cir. 1986) (stating that a prison official violates an inmate's constitutional right to be free from attacks by other inmates when the official is deliberately indifferent to the safety of the inmates under his care; *Stokes v. Delcambre,* 710 F.2d 1120, 1122-25 (5th Cir. 1983) (same).

[13] *See* Miss. Code Ann. § 47-5-112(4) (1981) ("When an offender is committed to the custody of the department of corrections and placed in a county jail under the provisions of this section, the county officials and employees operating the jail shall assume complete responsibility for the proper care and confinement of the offender."); § 19-25-69 (1972) ("The sheriff shall have charge of the courthouse and jail of his county, of the premises belonging thereto, and of the prisoners in said jail. He shall preserve the said premises and prisoners from mob violence, from any injuries or attacks by mobs or otherwise, and from trespasses and intruders.").

[14] Grissom cites no authority for his implied proposition that a Mississippi Sheriff has a duty to protect those inmates in another county jail over which he has no responsibility.

such abuse. Accordingly, we reverse and render as to Sheriff McNeel in both his official and individual capacities.[15]

III

Sheriff Patterson

A

Official Capacity

Monroe County contends that it was denied due process because it was not given notice and an opportunity to be heard regarding Grissom's claims against Sheriff Patterson in his official capacity.[16] Monroe County concedes that personal service of process was effected upon each of the five supervisors with regard to the issues of the complaint. Because the complaint explicitly stated that Grissom was seeking damages against Sheriff Patterson in both his individual and official capacities, we reject this contention of inadequate notice.

Monroe County also contends that it cannot be liable for any of the alleged actions of Sheriff Patterson. A county, or other local governmental entity, can be held accountable for the actions

---

[15] Grissom's theory at trial for holding Clay County liable was that Sheriff McNeel acted as the County's final policymaker. Grissom's claims against Sheriff McNeel in his official capacity were therefore derivative of his claims against McNeel in his individual capacity.

[16] *See Monell v. Department of Social Serv. of City of N.Y.,* 436 U.S. 658, 689 n.55, 98 S. Ct. 2018, 2035 n.55, 56 L. Ed. 2d 611 (1978) (stating that "official-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent"); *see also Will v. Michigan Dep't of State Police,* 491 U.S. 58, 109 S. Ct. 2304, 2311, 105 L. Ed. 2d 45 (1989) ("[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office.").

of an individual with final policy making authority regarding the action that allegedly caused the particular constitutional violation.[17] Under Mississippi law, Sheriff Patterson had final policy making authority for Monroe County over the county jail.[18] We therefore hold that Monroe County could have been held liable for the alleged actions of Sheriff Patterson regarding the care of inmates in the Monroe County Jail.[19] Because Monroe County's remaining challenges mirror Sheriff Patterson's challenges to his liability in his individual capacity, we turn next to the latter.

B

Individual Capacity

Sheriff Patterson contends that judgment as a matter of law should have been entered on the claim that he failed to protect Grissom from physical abuse by other inmates. "The Eighth Amendment affords prisoners protection against injury at the hands of other inmates."[20] To rise to the level of a constitutional injury,[21] McNeel's alleged failure to protect Grissom must have

---

[17] *See Colle v. Brazos County, Texas,* 981 F.2d 237, 244 (5th Cir. 1993); *Guidry v. Broussard,* 897 F.2d 181, 182 (5th Cir. 1990) (per curiam).

[18] *See* Miss. Code Ann. § 19-25-69.

[19] Monroe County also contends that the judgment as a matter of law for Monroe County Board of Supervisors, sued in its official capacity, constituted res judicata or collateral estoppel regarding Grissom's claims against Sheriff Patterson in his official capacity. Because Monroe County does not provide any analysis for this contention, we do not address it. *See United States v. Green,* 964 F.2d 365, 371 (5th Cir. 1992) (stating that the "[f]ailure to prosecute an issue on appeal constitutes waiver of the issue"), *cert. denied,* 113 S. Ct. 984 (1993).

[20] *Lucas,* 786 F.2d at 1259.

[21] In an action under § 1983, the plaintiff must show a violation of a constitutional right. 42 U.S.C. § 1983; *Daniels v. Williams,* 474 U.S. 327, 330, 106 S. Ct. 662, 664, 88 L. Ed. 2d 662 (1986).

resulted from deliberate indifference.[22] The evidence demonstrated that Grissom was attacked on two separate occasions, once by inmate Page and once by inmate Hollingsworth. Grissom conceded at trial that he instigated the attack by Page by striking Page first. Even were we to assume that Grissom had a limited Eighth Amendment right to be protected against acts of self-defense taken in response to his own actions,[23] there is no evidence in the record suggesting that Sheriff Patterson knew, or should have known, that Grissom was going to instigate the altercation. Consequently, a reasonable trier of fact could not have found that Sheriff Patterson was deliberately indifferent to the risk to Grissom's safety posed by inmate Page.

Grissom was attacked by inmate Hollingsworth after Hollingsworth was placed in the same cell as Grissom and several other inmates. The evidence demonstrated that prior to the attack, Grissom wrote several letters to Sheriff Patterson claiming that he had been threatened on numerous occasions by Hollingsworth. Grissom's letters neither specified the nature of these threats, nor provided any other details from which one could conclude that Grissom was in danger of physical harm. At trial, Grissom failed to present any evidence that Hollingsworth had attacked Grissom previously, or that Hollingsworth had a history of attacking other inmates. Notwithstanding Sheriff Patterson's failure to

---

[22] *See Johnston v. Lucas,* 786 F.2d 1254, 1259-60 (5th Cir. 1986); *see also Daniels,* 474 U.S. at 331-36; 106 S. Ct. at 664-67.

[23] Grissom cites no authority for this proposition.

investigate Grissom's claims[24] or take other reasonable precautions, this evidence is insufficient as a matter of law to support a finding that Sheriff Patterson was deliberately indifferent. "The legal conclusion of `deliberate indifference' . . . must rest on facts clearly evincing `wanton' actions on the part of the defendant[]."[25] Wantonness, in the context of a failure-to-protect claim, requires that the defendant be "conscious of the inevitable or probable results of [his] failure" to take preventative action.[26] Because the evidence did not demonstrate a strong likelihood that Grissom was in danger of physical harm, a reasonable trier of fact could only have concluded that Sheriff Patterson may have been negligent or grossly negligent. We therefore hold that the

---

[24] Patterson's chief jailer, James Castle, testified that the Sheriff responded to Grissom's letters by stating "ah, he'll be all right."

[25] *Johnson v. Treen,* 759 F.2d 1236, 1238 (5th Cir. 1985).

[26] *See id.* (attribution omitted); *see also Rhyne v. Henderson County,* 973 F.2d 386, 392 (5th Cir. 1992) (stating that the risk of injury must be obvious to find that a defendant was deliberately indifferent); *Young v. Quinlan,* 960 F.2d 351, 360-61 (3rd Cir. 1992) (stating that a prison official is deliberately indifferent to protecting an inmate from attacks by other inmates when the risk of injury is "sufficiently apparent that a lay custodian's failure to appreciate it evidences an absence of any concern for the welfare of his or her charges"); *Manarite v. City of Springfield,* 957 F.2d 953, 956 (1st Cir. 1992) (stating that "when liability for serious harm or death . . . is at issue, a plaintiff must demonstrate `deliberate indifference' by showing . . . an unusually serious risk of harm"); *James v. Milwaukee County,* 956 F.2d 696, 700 (7th Cir. 1992) (defining "deliberate indifference" to mean "disregarding a risk of danger so substantial that knowledge of the danger can be inferred"); *Brown v. Hughes,* 894 F.2d 1533, 1537 (11th Cir. 1990) ("The known risk of injury must be a strong likelihood, rather than a mere possibility before a guard's failure to act can constitute deliberate indifference.").

magistrate judge erred in denying Sheriff Patterson's motion for judgment as a matter of law on this claim.

Sheriff Patterson also contends that judgment as a matter of law should have been entered on Grissom's claim that he was denied access to the courts regarding his bankruptcy matters. "[T]he fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law."[27] The right of "adequate, effective, and meaningful" access to the courts includes access in general civil legal matters, as well as criminal and constitutional matters.[28] Grissom concedes that he had access to counsel during his time at the Monroe County Jail. Although he argues that counsel did not represent him on his bankruptcy matters, Grissom had the burden of showing that he requested assistance from his counsel and that counsel could not or would not provide such assistance.[29] Grissom failed to produce any evidence on this point. We therefore hold that the magistrate

---

[27] *Bounds v. Smith,* 430 U.S. 817, 828, 97 S. Ct. 1491, 1498, 52 L. Ed. 2d 72 (1977).

[28] *See Jackson v. Procunier,* 789 F.2d 307, 311 (5th Cir. 1986) (stating that a prisoner's reasonable access to the courts must include "access in general civil legal matters including but not limited to divorce and small claims" (attribution omitted)).

[29] *See Mann v. Smith,* 796 F.2d 79, 83-84 (5th Cir. 1986) ("[A]n inmate who has a lawyer and who wants to file a civil . . . complaint has the burden of requesting assistance from that lawyer. . . . [A]ttorneys can often rather easily give inmates the information that they need to proceed *pro se,* and that if they do, unnecessary *Bounds* problems may be avoided.").

judge erred in not granting Sheriff Patterson's motion for judgment as a matter of law on Grissom's access-to-courts claim.

Lastly, Sheriff Patterson contends that judgment as a matter of law should have been entered on Grissom's claims that the conditions of confinement at the Monroe County Jail))i.e., the alleged lack of proper medical care, food, exercise, clothing and bedding))constituted cruel and unusual punishment under the Eighth Amendment. An Eighth Amendment claim contesting the conditions of confinement has both an objective and subjective component.[30] The objective component requires us to determine whether the deprivation of an identifiable human need was sufficiently serious.[31] The subjective component requires us to determine whether the responsible prison officials acted with the culpable state of mind))i.e., deliberate indifference.[32]

Grissom claimed that he was denied proper medical care. "[D]eliberate indifference to medical needs amounts to an Eighth Amendment violation only if those needs are `serious.'"[33] The only time Grissom had a serious medical need was after his altercation with inmate Page on July 9, 1991. Grissom testified that

---

[30] *See Wilson v. Seiter,* 111 S. Ct. 2321, 2324 (1991); *see also Hudson v. McMillian,* 112 S. Ct. 995, 999 (1992).

[31] *See Wilson,* 111 S. Ct. at 2324 (stating that because "[t]he Constitution . . . `does not mandate comfortable prisons,' . . . only those deprivations denying `the minimal civilized measure of life's necessities' are sufficiently grave to form the basis of an Eighth Amendment violation" (citations omitted)).

[32] *See id.* at 2324-27.

[33] *Hudson,* 112 S. Ct. at 1000 (citing *Estelle v. Gamble,* 429 U.S. 97, 103-04, 97 S. Ct. 285, 290-91, 50 L. Ed. 2d 251 (1976)).

immediately after this incident, he was taken to a hospital where he was treated for his injuries. Based upon this evidence, a reasonable trier of fact could not have found that Sheriff Patterson acted with conscious disregard to Grissom's serious medical needs. We therefore hold that the magistrate judge erred in not granting Patterson's motion for judgment as a matter of law on this claim.

Grissom also claimed that he was denied adequate food because he was served only two meals a day. The Eighth Amendment does not require that prisoners receive three meals a day; rather, "the [E]ighth [A]mendment requires that jails provide inmates with `well-balanced meals, containing sufficient nutritional value to preserve health.'"[34] Grissom presented no evidence suggesting that the two meals he received were nutritionally inadequate. Although Grissom did lose some weight while in jail, he presented no evidence linking his weight loss to any insufficiency in the nutritional value of his meals.[35] Consequently, a reasonable trier of fact could not have found that Grissom was denied adequate food. We therefore hold that the magistrate judge erred in denying Patterson's motion for judgment as a matter of law on this claim.

Grissom further claimed that he was denied exercise, clothing, bedding, and an otherwise adequate living environment. After reviewing the record, we find no evidence from which a reasonable

---

[34] *Green v. Ferrell,* 801 F.2d 765, 770 (5th Cir. 1986) (quoting *Smith v. Sullivan,* 553 F.2d 373, 380 (5th Cir. 1977)).

[35] Grissom testified that he sometimes refused to eat at the jail because he did not like the food which was served.

trier of fact could conclude that Grissom was seriously deprived of any of these basic needs or that Sheriff Patterson acted with conscious disregard concerning these needs. For example, although Grissom was not allowed to use the jail's exercise yard on a regular basis, he was allowed to walk the hallways at least once a week.[36] Also, the only time Grissom had a mattress taken away from him was when he had two mattresses and one of the newly admitted inmates needed a mattress. We therefore hold that the magistrate judge erred in not granting Patterson's motion for judgment as a matter of law on these claims.

IV

Joe Grissom

Grissom cross-appeals, contending that the magistrate judge erred in denying his motion to amend his complaint to add a malicious prosecution claim against Sheriff McNeel. We review for abuse of discretion a denial of a motion for leave to amend.[37] "[U]nless there is a substantial reason to deny leave to amend, the

---

[36] Although Sheriff Patterson corroborated Grissom's testimony that he was not allowed regular access to the exercise yard, Grissom presented no other evidence in support of his claim of inadequate exercise, such as testimony concerning the size of his cell or the amount of time he spent locked in his cell. *See Green,* 801 F.2d at 771 ("Of particular importance in determining an inmate's need for regular exercise are the size of his cell [and] the amount of time the inmate spends locked in his cell each day . . . .").

[37] *See Dussouy v. Gulf Coast Inv. Corp.,* 660 F.2d 594, 597 (5th Cir. 1981) ("Appellate review of the decision to grant or deny leave is generally described as limited to `determining whether the trial court abused its discretion.'" (attribution omitted)).

discretion of the district court is not broad enough to permit denial."[38] Undue delay is one of the reasons that can justify denial of permission to amend a pleading.[39] Grissom filed his complaint on July 28, 1983. He did not seek to amend his complaint until June 26, 1991, less than a month before the trial date. Grissom does not offer an explanation to justify this inordinate delay of almost eight years. Indeed, the record reveals that Grissom was aware of the facts supporting a claim of malicious prosecution from the time the complaint was filed. Given this fact alone, we cannot conclude that the magistrate judge abused his discretion in denying Grissom leave to amend.[40]

V

Attorney's Fees

All the parties also challenge the magistrate judge's award of attorney's fees under 42 U.S.C. § 1988. According to that statute, a "court, in its discretion, may allow the *prevailing* party, other than the United States, a reasonable attorney's fee as part of the costs." Because we reverse and render as to Sheriff McNeel, we reverse the magistrate judge's award of attorney's fees entered against McNeel. Similarly, because we reverse and render as to

---

[38] *Id.* at 598.

[39] *Id.*

[40] Grissom also contends that the magistrate judge erred in denying his claim for prejudgment interest. Because reverse and render, we do not address this issue.

Sheriff Patterson, we reverse the magistrate judge's award of attorney's fees entered against Patterson.

VI

For the foregoing reasons, we REVERSE and RENDER for Sheriff McNeel in both his official and individual capacities. We further REVERSE the magistrate judge's award of attorney's fees against McNeel.

We REVERSE and RENDER for Sheriff Patterson in both his official and individual capacities. We further REVERSE the magistrate judge's award of attorney's fees against Patterson.

As for Grissom's cross-appeal, we AFFIRM the magistrate judge's order denying Grissom leave to amend the complaint to include a malicious prosecution claim.