UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

LUKE E. TUCKER,

Plaintiff,

v. Case No: 5:21-cv-204-Oc-30PRL

SHERIFF OF LAKE COUNTY, IN HIS OFFICIAL CAPACITY, ARMOR CORRECTIONAL HEALTH SERVICES, INC., ARNP JACQUELINE NURSE, RN WILMA CRUZ, LPN CYNTHIA MACIAS, RN APRIL SCHOFIELD, DR. DORA A. GAXIOLA, RN SHANA BOCK, RN LILLIAM ROJAS, and LPN AMARA HOSEIN,

Defendants.

ORDER

THIS CAUSE comes before the Court on Defendants' Motions to Dismiss (Dkts. 33, 38) and Plaintiff's Responses in Opposition (Dkts. 37, 42). Upon review of the motions, responses, and being otherwise advised in the premises, the Court grants Defendants' motions because the legal claims do not adequately allege Defendants' deliberate indifference to a serious medical need. The Court will grant Plaintiff a final opportunity to amend his claims if he can do so in good faith.

BACKGROUND

"[D]eliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain, which is prohibited by the Eighth

Amendment." *Harris v. Leder*, 519 Fed. Appx. 590, 595 (11th Cir. 2013) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (internal quotation marks omitted)). Plaintiff Luke E. Tucker alleges claims for deliberate indifference to his serious medical needs against Defendants Sheriff of Lake County, Armor Correctional Health Services, Inc., and eight medical professionals that Armor employed.

After Tucker filed his initial Complaint, Defendants moved to dismiss, arguing, in relevant part, that the Complaint was a shotgun pleading because it lumped all Defendants together in a single claim without specifying the acts or omissions attributed to each defendant. The Court agreed that Tucker's Complaint was a shotgun pleading but, rather than dismissing the Complaint, the Court construed the motions as seeking a more definite statement under Rule 12(e) and directed Tucker to file an Amended Complaint. *See Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1358 (11th Cir. 2018) (holding that prior to "dismissing a shotgun complaint for noncompliance with Rule 8(a), a district court must give the plaintiff 'one chance to remedy such deficiencies'").

Tucker heeded the Court's advice and filed an Amended Complaint that complies with the Federal Rules of Civil Procedure to the extent that the legal claims against each individual defendant are now separated and contain facts regarding the defendant's role in the alleged lack of treatment. So, the Court now discusses the facts of the Amended Complaint. (Dkt. 32).

On June 24, 2018, at approximately 11:00 a.m., Tucker, while a pretrial detainee in the Lake County Jail, was attacked by another inmate. Tucker immediately went to the jail's medical facility to seek treatment for the injuries from the attack, but he was examined

and told that no treatment was necessary. Tucker then called his mother and explained to her that he believed his jaw was broken and he was experiencing a lot of pain. At approximately 7:00 p.m., Tucker's mother arrived at the jail and spoke to a Lieutenant about her concerns. The Lieutenant reviewed the incident report and Tucker returned to the jail's medical facility on the morning of June 25, 2018.

The Amended Complaint's allegations are contradictory about what happened next. In the "General Allegations" section, Tucker avers that he sat in the medical facility for most of the day on June 25, 2018, and received no medical treatment. Later in the Amended Complaint, however, he alleges that he did receive an ice pack for his swollen jaw and ibuprofen for his pain, although neither alleviated his symptoms. Tucker alleges that he was sitting next to an x-ray machine for most of the day on June 25, 2018, but x-rays were not taken until later that same day. The x-rays revealed that his jaw was bilaterally broken and his eye socket was fractured. Tucker was served "regular hard food" that he was unable to eat instead of being placed on a soft/liquid diet.

On June 26, 2018, Tucker was transported to the Ocala Regional Medical Center for emergency surgery on his jaw. As a result of what Tucker contends was "cursory" medical care, Tucker claims all Defendants were deliberately indifferent to his serious medical needs. He avers that he was "forced to lie next to an x-ray machine with no pain medicine, no edible food, no x-rays, and no care for a significant time." (Dkt. 32 at ¶ 80).

So, Tucker's claims rest entirely on the events that took place from June 24-25, 2018. There are no further allegations regarding the outcome of Tucker's surgery, and it appears that his damages stem from the suffering he experienced during the alleged delay

in medical treatment. The Court underscores that the allegations are contradictory to the extent that Tucker repeatedly alleges he received no medical treatment during this time period, while also stating that he received ice treatment and ibuprofen.

Now, all Defendants move to dismiss Tucker's claims, arguing that they fail to plead the necessary elements to state a plausible claim as required under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

MOTION TO DISMISS STANDARD

Federal Rule of Civil Procedure 12(b)(6) allows a complaint to be dismissed for failure to state a claim on which relief can be granted. When reviewing a motion to dismiss, courts must limit their consideration to the well-pleaded allegations, documents central to or referred to in the complaint, and matters judicially noticed. *See La Grasta v. First Union Securities, Inc.*, 358 F.3d 840, 845 (11th Cir. 2004) (internal citations omitted); *Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005). Courts must accept all factual allegations as true and view the facts in a light most favorable to the plaintiff. *See Erickson v. Pardus*, 551 U.S. 89, 93–94, 127 S. Ct. 2197, 2200, 167 L. Ed. 2d 1081 (2007).

Legal conclusions, however, "are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). In fact, "conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal." *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003). To survive a motion to dismiss, a complaint must instead contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (internal quotation marks and citations omitted). This plausibility standard is met when the plaintiff

pleads enough factual content to allow the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (internal citations omitted).

DISCUSSION

The Supreme Court has interpreted the Eighth Amendment to prohibit "deliberate indifference to serious medical needs of prisoners." *Estelle*, 429 U.S. at 102. As a pretrial detainee at the Lake County Jail, Tucker's rights arose under the due process clause of the Fourteenth Amendment rather than the Eighth Amendment. *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1306 (11th Cir. 2009). Nonetheless, Tucker's claims are "subject to the same scrutiny as if they had been brought as deliberate indifference claims under the Eighth Amendment." *Id.* To prevail on a claim of deliberate indifference, a plaintiff must show: (1) a serious medical need; (2) a defendant's deliberate indifference to that need; and (3) causation between that indifference and the plaintiff's injury. *Id.* at 1306–07.

"[A] serious medical need is considered one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Hill v. Dekalb Reg'l Youth Det. Ctr.*, 40 F.3d 1176, 1187 (11th Cir. 1994) (internal citation and quotation marks omitted), *overruled in part on other grounds by Hope v. Pelzer*, 536 U.S. 730 (2002). To constitute a serious medical need, "the medical need must be one that, if left unattended, poses a substantial risk of serious harm." *Mann*, 588 F.3d at 1307 (internal citation and quotation marks omitted). For example, broken bones and bleeding cuts are serious medical needs that require attention within hours. *See Harris v. Coweta Cnty.*, 21 F.3d 388, 394 (11th Cir. 1994). Severe pain that is not promptly or adequately treated can also constitute a serious

medical need depending on the circumstances. *McElligott v. Foley*, 182 F.3d 1248, 1255–59 (11th Cir. 1999); *Brown v. Hughes*, 894 F.2d 1533, 1538 (11th Cir. 1990) (per curiam) (delay in treating inmate's broken foot, no matter how brief, could render defendants liable for deliberate infliction of pain).

A plaintiff claiming deliberate indifference to a serious medical need must prove: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence. *See, e.g.*, *McElligott*, 182 F.3d at 1255; *accord Bingham v. Thomas*, 654 F.3d 1171, 1176 (11th Cir. 2011) (per curiam). Conduct deliberately indifferent to serious medical needs includes: (1) grossly inadequate care; (2) a decision to take an easier but less efficacious course of treatment; and (3) medical care that is so cursory as to amount to no treatment at all. *Bingham*, 654 F.3d at 1176. A defendant who unreasonably fails to respond or refuses to treat an inmate's need for medical care or one who delays necessary treatment without explanation or for non-medical reasons may also exhibit deliberate indifference. *See, e.g.*, *Waldrop v. Evans*, 871 F.2d 1030, 1036 (11th Cir. 1989).

Notably, a plaintiff's statement that he experienced some pain or discomfort is insufficient—the pain must be objectively so severe that the failure to treat it deprives him "of the minimal civilized measure of life's necessities." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). To show "deliberate indifference," a prisoner must show that the defendant knew that he was at risk of serious harm if he did not receive medical treatment, but unreasonably—and at least recklessly—delayed, failed to provide, or refused to provide medical treatment. *McElligott*, 182 F.3d at 1255.

A showing of negligence or medical malpractice in the diagnosis or treatment of a prisoner's medical condition is also insufficient. *Estelle*, 429 U.S. at 105–06. When the alleged constitutional violation is the withholding of medical care, "there must be a subjective intent by the public officials involved to use the sufficiently serious deprivation in order to punish." *Taylor*, 221 F.3d at 1257. "A complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment." *Estelle*, 429 U.S. at 106 (internal quotations and citations omitted). For example, the prisoner in *Estelle* received treatment for his back injury but complained that more should have been done in the way of diagnosis. The Court rejected this as a basis for liability:

> But the question whether an X-ray--or additional diagnostic techniques or forms of treatment--is indicated is a classic example of a matter for medical judgment. A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment.

429 U.S. at 107. Put simply, an "official acts with deliberate indifference when he or she knows that an inmate is in serious need of medical care, but he fails or refuses to obtain medical treatment for the inmate." *McElligott*, 182 F.3d at 1255 (citations omitted).

Defendants argue, in relevant part, that Tucker's allegations do not state the elements of deliberate indifference to a serious medical need. The Court agrees. Taking everything as true, which the Court must do at this stage, it is unclear what Defendants knew when Tucker first went to the medical facility. He briefly alleges that a nurse examined him and sent him back to his pod. He also avers that he was in pain. But, as stated above, a plaintiff's statement that he experienced some pain or discomfort is

insufficient to communicate a serious medical need. Tucker must allege that his pain was objectively severe to the extent that the failure to treat him was deliberate and akin to cruel and unusual punishment.

Even assuming that a broken jaw is a serious medical need, the allegations do not allege that this was obvious to any of the Defendants. For example, Tucker does not allege that a bone was protruding or visibly broken. Tucker also does not allege that there was visible swelling or other noticeable signs of a broken jaw or fractured eye socket.

Tucker alleges that he was sent back to the jail's medical facility after his mother told a jail Lieutenant that Tucker was in excruciating pain and she believed his jaw was broken. These allegations appear to belie his legal claims because they suggest that Defendants were not indifferent to his needs once they were placed on notice that his jaw was possibly broken. Although unclear because of the inconsistent allegations, Tucker then received ice treatment, ibuprofen, and x-rays were performed, albeit not as early in the day as he would have liked. After the x-rays revealed his broken jaw and fractured eye socket, Tucker was transported to the Ocala Regional Medical Center for surgery.

In sum, although the Court is sympathetic to the pain and suffering Tucker alleges he experienced from June 24-25, 2018, the allegations fail to meet the legal standard discussed at length above—at most, Tucker states a medical negligence claim, which is insufficient. The Court believes further amendment is futile, but the Court permits Tucker a final opportunity to amend his claims since this is the Court's first discussion of the claims' merits. If Tucker elects to amend his claims, he should attempt to resolve the inconsistencies in the factual allegations.

Accordingly, it is ORDERED AND ADJUDGED that:

1. Defendants' Motions to Dismiss (Dkts. 33, 38) are granted.

2. Plaintiff's Amended Complaint is dismissed without prejudice to file a Second Amended Complaint within fourteen (14) days of this Order if Plaintiff can amend his claims in good faith, keeping in mind the Court's discussion of the legal standard.

3. If Plaintiff fails to file a Second Amended Complaint by the deadline, the Court will dismiss his claims with prejudice and close this case.

DONE and **ORDERED** in Tampa, Florida, this August 5, 2021.

JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record