

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA**

Williams v. Allison

No. 24-cv-1382-AGS-AHG (S.D. Cal. May 21, 2025) · No. 24-cv-1382-AGS-AHG · Decided May 21, 2025

OPINION

Williams v. Allison

PER CURIAM.

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF CALIFORNIA

3 John Wesley WILLIAMS, Case No.: 24-cv-1382-AGS-AHG 4 Plaintiff,

ORDER GRANTING MOTION FOR

5 v. RECONSIDERATION (ECF 6)

6 Kathleen ALLISON, et al., 7 Defendants. 8 9 This Court previously denied plaintiff John Williams’s request to proceed without 10 paying the required court-filing fee, finding that his allegations did not present an 11 “imminent danger of serious physical injury.” (ECF 5, at 2.) Because Williams already has 12 three litigation strikes—that is, three prisoner lawsuits dismissed as “frivolous, malicious, 13 or fail[ing] to state a claim upon which relief may be granted”—he may only proceed here 14 without prepaying fees if he plausibly alleges that he “is under imminent danger of serious 15 physical injury.” See 28 U.S.C. § 1915(g); (see also ECF 5, at 2 (collecting his previous 16 dismissals)). Williams now requests reconsideration, arguing that the Court wrongly 17 concluded that his plumbing-related allegations do “not meet the imminent danger of 18 serious physical injury requirement.” (ECF 6, at 2.) 19 Reconsideration is warranted when “the district court (1) is presented with newly 20 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, 21 or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J v. ACandS, 22 Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Williams offers no new evidence nor legal changes, 23 so the Court’s assessment is limited to whether it clearly erred. “[C]lear error occurs when 24 the reviewing court on the entire record is left with the definite and firm conviction that a 25 mistake has been committed.” *American Gen. Life Ins. Co. v. Le*, No. EDCV 22-0876JGB 26 (KKX), 2024 WL 3005866, at *2 (C.D. Cal. May 17, 2024). 27 To succeed, Williams must demonstrate that he is facing an “imminent” “danger of 28 serious physical injury.” See *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). 1 An allegation is “imminent” if it exists “at the time of filing.” *Id.* Williams’s complaint 2 alleges that the prison’s “ongoing” plumbing issues “persist at the time of filing this action” 3 (ECF 1, at 12), so the circumstances meet the “imminent” requirement, see *Andrews*, 4 493 F.3d at 1055. 5 And Williams’s plumbing allegations also satisfy the “danger of serious physical 6 injury” element. “A

physical injury is ‘serious’ for purposes of § 1915(g) if it has 7 potentially dangerous consequences such as death or severe bodily harm.” *Gresham v. 8 Meden*, 938 F.3d 847, 850 (6th Cir. 2019). Williams alleges that “raw sewage” has been 9 “over-flowing from the sink drain inside [his] assigned cell quarters.” (ECF 1, at 14.) This 10 “caus[es]” a “ferocious stink that provoke[s] nausea, cho[oking], and vomit[ing]” and 11 “expos[es]” him “to airborne contaminates,” such as “hepatitis, bacterial infection, and 12 covid-19.” (Id. at 5, 14.) A feces-filled quarters that causes vomiting, choking, and 13 exposure to those diseases “has potentially dangerous consequences,” including “severe 14 bodily harm.” See *Gresham*, 938 F.3d at 850; see also *Andrews*, 493 F.3d at 1055 (finding 15 that alleging a “risk of contracting” “hepatitis . . . more than plausibly raises the specter of 16 serious physical injury”). 17 The Court GRANTS reconsideration, reopens the case, and will screen Williams’s 18 complaint. See 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b).

19 SCREENING

20 The Court must dismiss the revived complaint if it “fails to state a claim.” 28 U.S.C. 21 § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000). “The standard 22 for determining whether a plaintiff has failed to state a claim upon which relief can be 23 granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 24 12(b)(6) standard for failure to state a claim.” *Watson v. Carter*, 668 F.3d 1108, 1112 (9th 25 Cir. 2012). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted 26 as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 27 662, 678 (2009) (cleaned up). 28 1 Williams makes his allegations under 42 U.S.C. § 1983, and he divides his complaint 2 into three “counts” that are all premised on sewage-related Eighth Amendment allegations 3 against California Department of Corrections and Rehabilitation Secretary Kathleen 4 Allison, Governor Gavin Newsom, Warden James Hill, “Chief Deputy warden” R. Buckel, 5 “Chief Deputy warden” M. Palmer, Correctional Sergeant Juarez, and Correctional Officer 6 Beltran. (See generally ECF 1.) 7 “Section 1983 creates a private right of action against individuals who, acting under 8 color of state law, violate federal constitutional or statutory rights.” *Devereaux v. Abbey*, 9 263 F.3d 1070, 1074 (9th Cir. 2001). To establish § 1983 liability, Williams must show 10 both “(1) deprivation of a right secured by the Constitution and laws of the United States, 11 and (2) that the deprivation was committed by a person acting under color of state 12 law.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012). The second 13 requirement, that the defendants acted “under color of state law,” is satisfied here given all 14 the defendants “may fairly be said to be” “state actor[s],” and Williams is an inmate “for 15 whom the State is responsible.” See *West v. Atkins*, 487 U.S. 42, 49 (1988). 16 As to the first requirement, Williams alleges that the defendants violated his Eighth 17 Amendment “right to be free from cruel and unusual punishment.” (ECF 1, at 4.) To 18 succeed, Williams must show that the officials acted with “deliberate indifference” to a 19 “substantial risk of serious harm.” *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). 20 Prison plumbing issues create a substantial risk of

serious harm, so as to violate an inmate's right to be free from cruel and unusual punishment, when the plumbing is "in such disrepair as to deprive inmates of basic elements of hygiene and seriously threaten their physical and mental well-being." *Hoptowit v. Spellman*, 753 F.2d 779, 783 (9th Cir. 1985). Williams's sewage scenario—which involves a recurring "raw sewage" "over-flow[]" in his "cell quarters" (ECF 1, at 14)—"deprive[s]" him "of basic elements of hygiene and seriously threaten[s]" his "physical and mental well-being," see *Hoptowit*, 753 F.2d at 783. So he has sufficiently alleged the "substantial risk" prerequisite. See *Farmer*, 511 U.S. at 828. The question remains, then, whether defendants were deliberately indifferent to this impending harm. The "deliberate indifference" standard is met when an "official knows of 3 and disregards an excessive risk to inmate health or safety; the official must both be aware 4 of facts from which the inference could be drawn that a substantial risk of serious harm 5 exists, and he must also draw the inference." *Id.* at 837. 6 "Since as early as January 2022," according to the complaint, defendants "Allison, 7 Newsom, Hill, Buckel, and Palmer have been made aware through endless plum[b]ing 8 work orders and plum[b]ing related complaints" that there was a "constant and 9 reoccurring" "overflow of feces, sewage, and urine" causing a "risk of exposure to 10 airborne contaminants like hepatitis, bacterial infection, and covid-19." (ECF 1, at 5.) And, 11 as to defendants Juarez and Beltran, Juarez "responded" to one of the "waste spill[s]" by 12 "instructing Defendant Beltran to have inmates" "use a mound of wool blankets to soak up 13 the waste." (*Id.* at 9.) Then, "after about 2–3 hours of constant waste flooding," the two of 14 them wanted to "go home" so they left "the waste spill" unresolved. (*Id.*) This was not the 15 only instance in which Williams and his fellow inmates were left to their own devices to 16 "remove the waste floods from inside cell quarters without any safety . . . or protective 17 gear." (*Id.* at 7.) 18 True, a plumber was summoned in response to at least some of the recurring sewage 19 outbreaks. (ECF 1, at 10.) But according to the "plum[b]er who regularly respond[s] to 20 each waste spill," anytime he "fix[es] one flood in one area, it happens somewhere else." 21 (*Id.*) On one occasion, a wastewater "overflow" started "in the facility dining hall," 22 "rotate[d] to" "one of the two toilets and urinals" in the "exercise yard," and then flooded 23 from the "shower drains inside one of the . . . housing units." (*Id.* at 6–7.) 24 Williams's Eighth Amendment claims against all defendants thus survive the "low 25 threshold for proceeding past the screening stage." See *Wilhelm v. Rotman*, 680 F.3d 1113, 26 1123 (9th Cir. 2012). The defendants allegedly knew of the facts underlying the dangerous 27 plumbing deficiencies and drew "the inference" from those facts that a "substantial risk of 28 serious harm exists" on account of the feces-filled facilities. See *Farmer*, 511 U.S. at 837; 1 see also *Thomas v. Ponder*, 611 F.3d 1144, 1150 (9th Cir. 2010) (finding that officials 2 acted with deliberate indifference when "the risk posed by the deprivation" was "obvious").

3 CONCLUSION

4 The Court orders as follows: 5 1. Williams's motion to proceed IFP is GRANTED. 6 2. The Secretary of the CDCR, or his designee, must collect the \$350 filing fee 7 from Williams's prison

trust account in monthly payments equal to 20% of the preceding 8 month's income each time the amount in his account exceeds \$10, and forward those 9 payments to this District's Clerk of Court. 28 U.S.C. § 1915(b)(2). 10 3. The Clerk of Court must serve a copy of this order on Jeff Macomber, 11 Secretary, California Department of Corrections and Rehabilitation, P.O. Box 942883, 12 Sacramento, California 94283-0001. 13 4. The Clerk must issue summonses as to Williams's complaint (ECF 1) for all 14 defendants and forward the summonses to Williams along with a blank U.S. Marshal

15 Form 285. For use in serving these defendants, the Clerk will provide Williams with 16 certified copies of the complaint and summonses. Upon receipt of this "In Forma Pauperis 17 Package," Williams must complete the USM Form 285 as completely and accurately as 18 possible, include an address where that defendant may be found and/or subject to service, 19 and return the forms to the United States Marshal according to the instructions the Clerk 20 provides in the letter accompanying the package. See S.D. Cal. CivLR 4.1(c). 21 5. The U.S. Marshal must serve a copy of the complaint and summons upon 22 defendants as directed by Williams on the USM Form 285. Costs of service will be 23 advanced by the United States. See 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3). 24 6. After service has been completed by the U.S. Marshal, Williams must serve 25 upon defendants, or if appearance has been entered by counsel, upon defendants' counsel, 26 a copy of every further pleading, motion, or other document submitted for the Court's 27 consideration. See Fed. R. Civ. P. 5(b). With every original document Williams seeks to 28 file with the Clerk, Williams must include a certificate stating the manner in which a true 1 || and correct copy of that document has been served on defendants or their counsel, and the 2 || date of that service. See S.D. Cal. CivLR 5.2. The Court may disregard any document that 3 ||has not been properly filed with the Clerk or that fails to include a Certificate of Service 4 ||upon a defendant or defense counsel. 5 Dated: May 21, 2025 7 Hon. Andrew G. Schopler g United States District Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28