No. 18-3535

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MICHAEL JOHNSON,

Plaintiff-Appellant,

v.

SUSAN PRENTICE, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of Illinois, No. 1:16-cv-1244
Before the Hon. Colin S. Bruce

CORRECTED OPENING BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFF-APPELLANT MICHAEL JOHNSON

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Appellate Court No: 18-3535

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II. Whether the district court erred in awarding summary judgment to Defendants when, in violation of the Eighth Amendment, they persisted for nearly four years with a course of mental health treatment known to be ineffective and refused a transfer to a specialized mental health treatment unit?

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INTRODUCTION

Michael Johnson, classified Seriously Mentally Ill ("SMI") by the Illinois Department of Corrections ("IDOC"), served more than *nine* years in solitary confinement. But Johnson's experience was far worse than even that astonishing duration suggests. For nearly four years of that period—the particular subject of this lawsuit—correctional and mental health personnel inflicted a particularly brutal incarnation of solitary confinement upon Johnson: they denied him virtually all out-of-cell time. Twenty-four hours a day for nearly four years, Johnson was consigned to a hermetically sealed box approximately the size of a parking space.

Recently, Justice Sotomayor likened solitary confinement for two years *with* regular indoor (but no outdoor) exercise to being confined in a "penal tomb." *Apodaca v. Raemisch*, 139 S. Ct. 5, 10 (2018) (Sotomayor, J., respecting denial of cert.). Johnson endured far worse than the conditions that prompted that descriptor. Further exacerbating the cruelty of Johnson's 24/7 solitary confinement were the cells unfit for human habitation—coated in human excrement and dangerously hot—in which he endured it.

Predictably, Johnson's health was precarious during this period and he boomeranged from crisis to crisis. He was perennially on suicide watch. At times, he became so sick that he smeared feces all over his body, hallucinated, and compulsively excoriated his own flesh. And he engaged in conduct occasioned by his disease that caused mental health and correctional personnel to extend his 24/7 solitary confinement.

Over the course of nearly four years during which this vicious cycle continued, Johnson routinely informed correctional and mental health personnel that he was deteriorating in response to his 24/7 solitary confinement in hazardous cells. He pleaded with them to transfer him to a specialized mental health unit. And although records show that at least some mental health personnel conceded that

extreme solitary confinement was contraindicated, they and correctional personnel renewed it for years.

Without a lawyer, Johnson sued Pontiac correctional personnel ("IDOC Defendants"), Pontiac mental health personnel employed by Wexford Health Sources, Inc. and Wexford itself (collectively, "Wexford Defendants"), challenging his unrelenting 24/7 solitary confinement under the Eighth Amendment. The district court awarded summary judgment to Defendants, reasoning that neither the 24/7 solitary confinement nor the inadequate mental health care that accompanied and prolonged it amounted to a deprivation of the minimal civilized measure of life's necessities. Its decision is erroneous in every respect and should be vacated.

STATEMENT OF THE CASE

I. Factual Background

A. The Illinois Department of Corrections Designates Johnson Seriously Mentally Ill.

Michael Johnson, certified SMI by the IDOC, is afflicted with a broad array of mental disorders. App.9, 15; App.187; App.535.[1] He suffers from antisocial personality disorder, severe depression, bipolar disorder, poor impulse control, panic disorder, anxiety disorder, and excoriation disorder (compulsive scratching to the point of injury). App.9, 38-39; App.53, 65; App.118; App.190; App.423, 430;

[1] ECF refers to the docket below. DOC refers to the docket on appeal. ShortApp. refers to the short appendix. App. refers to the appendix.

App.445; App.458; App.535, 539. Johnson has attempted suicide more than 15 times. App.458. As a consequence of his mental illnesses he unsuccessfully cycled through approximately ten anti-psychotic, anti-depressant, anti-anxiety, and bipolar-management psychotropic medications. *Id*.; ShortApp.9.

Johnson's conduct in the IDOC—from which he has been released—was consistent with his mental disorders. App.291, 295; ECF 122 at 1. With regularity, he smeared his own feces on his body and his cell. App.191, 193; App.536; App.573, 581. At least once, he shoved human waste outside his cell or aimed spit or other bodily fluids at prisoners or correctional staff. App.54; App.431; App.441, 443; App.536; App.577-79, 582-86. He kicked correctional personnel on one occasion and attempted to do so on another. App.573, 575. He damaged IDOC property—specifically, bedding, a glass pane, and a food tray. *Id*. at 1-2. He "disobeyed direct orders and was "insolent." *Id*. at 1-7. Johnson blames his mental disorders for this misconduct. App.9, 15, 38. To some degree, IDOC and Wexford personnel did, too. App.295; App.410; App.458-59.

As a consequence of this behavior, Wexford and IDOC personnel caused Johnson to serve the vast majority of his sentence—indeed, more than nine years—in solitary confinement.[2] App.534, 535-36; App.572-78. The final almost four years

[2] Johnson's isolation was referred to as "segregation" in the district court. That condition, as Justice Kennedy has explained, "is better known [as] solitary confinement." *Davis v. Ayala*, 135 S. Ct. 2187, 2208 (2015) (Kennedy, J.,

of isolation that he experienced—the subject of this lawsuit—occurred at Pontiac Correctional Center ("Pontiac"), where Johnson was housed in the decrepit North Cell House. App.7, 29; App.246, 248, 254; App.256, 263; App.467; App.534.

B. Defendants Subject Johnson to an Extreme Form of Solitary Confinement.

Typically, IDOC permits prisoners in solitary confinement to exercise outside of their cell for at least several hours per week. *See* App.238. They may do so in an outdoor exercise cage, weather permitting, or in an indoor recreation room, collectively referred to as "yard." App.539, 544.

At Pontiac, however, Defendants inflicted a particularly brutal form of solitary confinement on Johnson. As a consequence of both his mental illness and the behavior it induced, for nearly four *years* Johnson was on "yard restriction"—a classification entitling him to only one hour outside his cell per *month*. App.7, 10, 29; App.576-78. Even that monthly breather was often denied for insignificant reasons—*e.g.*, a messy cell—or no reason at all, App.8, 9, 15, 29-30, 48-49; App.115-16; App.138, 148, 202; App.537, a practice that was habitual at Pontiac. App.116-17; App.248, 250, 252; App.537.

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concurring); *see also Apodaca v. Raemisch*, 139 S. Ct. 5, 6 (2018) (Sotomayor, J., respecting denial of cert.) ("segregation . . . is also fairly known by its less euphemistic name: solitary confinement").)

"[L]iterally 24 hours a day, 7 days a week," App.8, 10, 30, 42, therefore, Johnson languished in a "very small, confined space where [he] couldn't even move around," let alone exercise. App.539; App.471. It was a "box with three solid walls," virtually hermetically sealed with a solid door punctuated by a feeding slot. App.8; App.110; App.537; *see also* App.750.

There, he experienced the sort of social isolation and sensory deprivation that Justice Kennedy warned inflicts a "terrible price." *Davis*, 135 S. Ct. at 2210 (Kennedy, J., concurring); *see also* App.123. His primary form of social interaction with other prisoners, many of whom were also mentally ill, appeared to consist of "listening to the[] inmates screaming and hollering and banging and kicking." App.13-14; App.104; App.143; App.536. There is no evidence in the record that he had regular meaningful social interactions with guards or other personnel that would counter his isolation.

Other dehumanizing restrictions abounded. On the rare occasions that Johnson left his cell, he was restrained with shackles. App.115; App.537, 539. He was permitted a single ten-minute shower weekly. App.10, 19, 45. Johnson could not touch his visitors. *See* App.753-55; App.746-47 His cell light remained on 24/7. App.143.

C. Defendants Consign Johnson to Solitary Confinement Cells Unfit for Human Habitation.

Johnson endured this extreme solitary confinement in decrepit and unsanitary cells that were hazardous to his health. App.8, 10-11, 17, 19, 32-33, 45-46; App.136-38; App.210. To start, the air conditioning and heating vents he depended upon for fresh and temperate air were clogged with garbage and dust that had accumulated through years of neglect. App.12, 32-33; App.146. The combined effect of that disrepair and a solid door that inhibited air flow subjected Johnson to indoor temperatures of between 90 and 100 degrees during the summer months.[3] App.11, 17-18, 42-43. Because he was indigent, however, Johnson could not afford a fan and the IDOC would not loan him one. App.18, 43. To make matters worse, Johnson was regularly exposed to "potent odors of fecal matter" emanating from pools of untreated human waste that seeped from cracked plumbing. App.11, 33; App.146, 148.

His cells were "filthy" more often than not and sometimes "caked" with his own or a prior occupant's feces. App.137; App.538, 539. Johnson, however, could not afford to purchase proper cleaning supplies from the commissary, and IDOC would not provide them free of charge. App.538. As a consequence, he was forced

[3] When it was sweltering, correctional personnel sometimes provided Johnson with a cup of ice or placed a fan in the wing. App.534. However, that single cup of ice could not keep Johnson cool for long, and the distant fan's breeze could not penetrate a solid cell door. *Id.*

on "numerous occasions" to clean his feces-smeared cell and toilet with bare hands. *Id*. That contact with human waste caused physical injury on at least one occasion. *Id*.

D. Johnson's Health Deteriorates in Solitary Confinement.

Not surprisingly, Johnson's health suffered at Pontiac. App.13-16, 36, 38-39; App.149-50; App.431-32, 438; App.534, 539. Reports memorializing Johnson's contact with the IDOC and Wexford Defendants and other prison personnel consistently document that he careened from one mental health crisis to another during the almost four years he endured 24/7 solitary confinement. App.449; App.590-92, 612-13, 620-22, 628, 631-35; App.685-88, 701.

Indeed, within weeks of being sent to solitary confinement, Johnson was placed on "crisis watch" for suicidal ideations. App.420. During the years that followed, he rotated on and off of suicide watch. App.449; App.590-92, 612-13, 620-22, 628, 631-35; App.685-88, 701. As Johnson described it, depression sometimes "immobilize[d]" him to the point that he "doesn't eat, he doesn't wash up, he doesn't clean up, and can't do nothing but lay in his bed." App.16, 30. Other times, when the "conditions were overwhelming" he "would get so depressed" that he "would just spread feces all over [him]self" and his cell, which Defendants sometimes reported observing. App.191; App.536, 539; App.635. Still other times he attempted

to commit suicide by engaging in conduct designed to induce the "Orange Crush" to rush his cell and kill him. App.536.

His other mental disorders fared no better at Pontiac. At times, Wexford Defendants reported that Johnson was delusional and responding to imagined internal stimuli. App.424-26. Other times, he reported anxiety and panic. App.39; App.190. He "stared at walls and ceilings until his mind played tricks on him." App.742. Johnson's mental illnesses left him unable to maintain a tidy cell, which Defendants and other prison personnel punished him for by lengthening his injurious yard restriction. App.9, 30.

His physical health declined, too. The nearly four-year deprivation of sunlight caused painful sores. App.118; App.557. His excoriation disorder left him with wounds on his face and body. App.735; App.65; *see also* ShortApp.11. The lack of exercise made his muscles cramped and spasmodic and his hands shaky. App.30; App.277-85. Filth and inadequate ventilation caused respiratory difficulties and frequent nose bleeds. App.12, 32-33; App.148; App.277, 5, 8, 10. He suffered from headaches and "overwhelming fatigue." App.8, 30. He experienced "painful chest contractions." *Id*. at 13; App.147.

E. Johnson Informs Defendants That 24/7 Solitary Confinement Is Inflicting Psychological and Physical Injury But They Renew it For Nearly Four Years.

Over the course of almost four years, Johnson routinely informed the IDOC and Wexford Defendants and personnel that his health was declining as a result of the debilitating conditions in solitary confinement. App.30, 36, 38-39; App.87, 115-16; App.149-50; App.431-32, 438; App.535, 536, 537-38. Time and again, he requested that they lift the restriction on out-of-cell exercise and transfer him to a specialized mental health unit.[4] App.15-16, 29-30, 48-49, 38-39; App.126; App.186-87, 193; App.534-35.

At least one Wexford Defendant, Andrea Moss, appeared to concede in a report that extreme solitary confinement was contraindicated:

> [Johnson] has poor mood regulation due to minimal coping strategies. He is hyperactive, on yard restriction and has no outlet for his mania which consist of poor impulse control, hyper-vigilance, poor judgment, poor insight, and has been restricted in his basic needs due to being indigent/manic.[5]

App.291. Yet Wexford Defendants and other Wexford personnel were disinclined to order Johnson's transfer to a specialized mental health treatment facility. App.38-

[4] IDOC and Wexford personnel share responsibility for imposing and maintaining solitary confinement on seriously mentally ill prisoners. *E.g.*, App.195; App.226-29; ECF 59 at 18, 52, 54; App.410; *see also* App.746-47; App.748; App.749.

[5] Likewise, Wexford physicians identified insufficient exercise as a cause of Johnson's muscular-skeletal complaints, and prescribed additional exercise as a cure. App.356-57; App.280.

39; App.126; App.187; App.534-35. Their reasons for the denial were shifting. At times, they informed him that there was no bed space in the treatment unit. App.38-39. Other times, they asserted that Johnson's inconsistent compliance with Pontiac regulations and his psychotropic regimen was proof positive that he would not benefit from the enhanced treatment available at a specialized mental health facility. App.15-16; App.431. Throughout, the IDOC and Wexford Defendants continued to recommend extensions to Johnson's 24/7 solitary confinement and otherwise acquiesced in it.[6] App.186; App.410; App.575-78; App.729.

F. The Vicious Cycle Ends Only After Johnson Files A Lawsuit.Error! Bookmark not defined.

For nearly four years, Johnson was stuck in a painful loop. His mental disorders made it difficult to comply with Pontiac regulations. App.30; App.138-39; App.291, 295. As Defendant Haag explained:

> [Johnson] exhibits poor impulse control as evidenced by extensive disciplinary history as a result of offender's . . . inability to comply with security staff direct orders and cellhouse protocol. Further evidence of poor impulse control is reflected in history of placement in disciplinary segregation housing. Liable mood associated with Bipolar [diagnosis] results in poor affect regulation [sic] and inhibited insight.

[6] Although Johnson, when subsequently deposed, seemed to suggest that, "for the most part," "mental health professionals" were uninvolved with the out-of-cell exercise restriction, App.538, the record below and IDOC's own regulations make clear that Johnson was correct the first time: mental health professionals are, in fact, intimately involved in the decision of whether to impose or renew 24/7 solitary confinement. Notably, counsel to Wexford Defendants conceded that point. App.538-39.

App.458. IDOC and Wexford Defendants and other personnel responded to misconduct with 24/7 solitary confinement. App.30, 48; App.138-39; App.575-78. That discipline caused his mental and physical health to deteriorate further, which resulted in more misconduct, and a lengthier term of 24/7 solitary confinement. App.9, 15, 38-39; App.96, 107-08, 123. Ad infinitum.

Eventually—specifically, several months after being served with this lawsuit—the Wexford Defendants reversed course and transferred Johnson to a treatment unit. App.123; App.458-10; App.461; App.475; App.534. All of the reasons that they had for not transferring Johnson to a specialized treatment unit over the course of almost four years somehow supported his transfer. He would in fact benefit from the degree of treatment available in a specialized mental health unit. App.458-10; App.461. The level of care available in his unit was actually inadequate. *Id*. Johnson's long struggles to comply with his psychotropic medication regimen now counseled in favor of transfer. *Id*.

II. Procedural History

A. Johnson Files A Pro Se Lawsuit And Pleads for Legal Assistance.

In June 2016, Johnson, filed a pro se verified complaint against Pontiac correctional administrators and line officers, Pontiac mental health professionals,

and Wexford itself for violating the Eighth Amendment.[7] App.2-6, 21-25. Johnson held the Wexford entity responsible under both *Monell*, App.116-42; ECF 55 at 1-20, and respondeat superior theories of liability. App.535. He sought damages, injunctive and declaratory relief, and other appropriate remedies. App.25-26.

Specifically, Johnson faulted the IDOC Defendants for relegating him to prolonged 24/7 solitary confinement in unsafe and unsanitary cells despite their knowledge of the risk. App.7-25. He held the Wexford Defendants accountable for refusing to transfer him to a specialized mental health unit, thereby prolonging his 24/7 solitary confinement, notwithstanding their knowledge of the conditions he was enduring and the perilous state of his health. *Id*. He also alleged that the Wexford Defendants provided him with constitutionally inadequate mental health care because they refused to implement an effective mental health treatment plan at Pontiac or transfer him to a mental health unit. *Id*.

At that time, Johnson also filed the first of 14 motions seeking appointment of counsel. *E.g.*, App.50-51. The district court denied each motion. *E.g.*, App.723-25. Several months after Johnson filed his original complaint, he moved for leave to file an amended complaint—which he also verified—in order to both elaborate upon

[7] Johnson also sued Riliwan Ojelade, Andrew Tilden, and Deidre Marano, physicians who worked at Pontiac. *See* App.3-4. He voluntarily dismissed Marano in the district court, ECF 96 at 1, and does not press claims against Tilden or Ojelade on appeal.

the allegations contained in his original complaint and name additional defendants. App.66-75; App.76-133. The district court denied the motion with leave to renew it. App.307-08.

B. Defendants Move For Summary Judgment.

In 2018, the Wexford and IDOC Defendants moved separately for summary judgment. App.311-53; App.512-32.

Regarding Johnson's conditions claim, the Wexford and IDOC Defendants principally argued the following: First, 24/7 solitary confinement in unsanitary and decrepit conditions do not constitute a deprivation of basic human needs. App.346-48; App.525-27. Second, Defendants alleged that neither could unilaterally modify Johnson's solitary confinement, a factor that militated against a finding that either was deliberately indifferent. App.350; App.529. Likewise, Johnson's disciplinary infractions and inconsistent compliance with psychotropic medication—not Defendants—allegedly were to blame for his harsh conditions of confinement. App.348-49; App.526. Third, Johnson could not prove that the conditions of confinement he endured were the proximate cause of his deteriorating physical or psychological health. App.349; App.526.

Regarding Johnson's constitutionally inadequate mental health care claim, the Wexford Defendants denied that his mental illnesses were objectively serious.[8] App.312, 351. They argued, moreover, that they were not deliberately indifferent. Specifically, the Wexford Defendants asserted that they "appropriately managed" Johnson's mental illnesses when he was at Pontiac. App.344-45. They also argued that Johnson could not establish that Wexford itself had "an impermissible or constitutionally forbidden policy or practice" and therefore the corporation was entitled to judgment as a matter of law. App.351.

C. The District Court Awards Summary Judgment To Defendants.

Johnson responded pro se to Defendants' summary judgment motions, but noted that he "could not finish" his opposition brief. App.742. Several weeks later, the district court awarded summary judgment to the Wexford and IDOC Defendants.

1. Conditions of Confinement

The district court determined that the conditions endured did not violate the Eighth Amendment. Disregarding contrary record evidence, it found the following: First, that Johnson was not "wholly denied the opportunity to exercise" but rather "could still move around in his cell to a certain extent." ShortApp.15 (citing

[8] The district court appears to have misstated the Wexford Defendants' position in this regard. ShortApp.16.

App.539).[9] Second, that Johnson had not "suffered adverse health consequences as a result of the denial of access to the yard." *Id*. Third, that there was "some improvement in [Johnson's] mental health conditions throughout the relevant time frame." *Id*. Fourth, that Johnson could not have been subjected to a feces-covered cell "for any significant length of time as [he] was housed in a crisis cell with well-being checks conducted every ten (10) minutes." ShortApp.14. And fifth, that Johnson could not have "experienced excessive heat in every cell" because "the different construction of cell doors suggests that the level of airflow within the cells also varied" and "prison officials provided [Johnson] with ice when the temperatures rose and operated fans at the ends of the galleries to alleviate the heat." ShortApp.13-15.[10]

Although the district court recognized that "[s]ome conditions may establish an Eighth Amendment violation in combination when each would not do so alone" it did not appear to evaluate the conditions cumulatively. *See* ShortApp.12-16. Thus, it did not consider, for example, whether SMI, plus solitary confinement, plus the out-of-cell restriction, plus excrement-smeared cells, plus excessive heat, plus

[9] Johnson's deposition was entered into the record multiple times. The district court cited to App.359-409. Johnson cites to App.533-71.

[10] The district court suggested that Johnson was sometimes housed in cells with bars while in 24/7 solitary confinement. ShortApp.6. The record does not support that finding and, in fact, Johnson's evidence is to the contrary. App.537.

extraordinary duration exposed Johnson to an objectively unreasonable risk of harm.[11]

As a final matter, again ignoring contrary evidence, the district court declared that "no reasonable inference exists that prison officials acted with deliberate indifference towards any risk of harm [Johnson] faced." ShortApp.16.

2. Mental Health Care

The district court concluded that the Wexford Defendants did not violate the Eighth Amendment. First, the district court found causation lacking for the following reasons: (1) Johnson's "mental health issues arose prior to his incarceration"; and (2) Johnson's "behavior was not always related exclusively to his cell conditions or mental health conditions." ShortApp.17. As a consequence, the district court concluded that "the record does not . . . permit a reasonable inference that the conditions in segregation at Pontiac caused or exacerbated [Johnson's] issues." ShortApp.17.

Second, ignoring contrary evidence, the district court found that the record does "not permit a reasonable inference that [the Wexford Defendants] ignored any substantial risk of harm [Johnson] faced, unreasonably delayed or persisted in a course of treatment known to be ineffective, or based their decision on factors not

[11] The district court did not acknowledge Johnson's evidence regarding the noise levels to which he was subjected or the stench from raw sewage.

related to the exercise of sound medical judgment." ShortApp.17. This was so for the following reasons: (1) "Mental Health Defendants continuously monitored [Johnson's] mental health condition throughout the relevant timeframe, and they adjusted [Johnson's] medications in response to any issues that arose"; (2) "Mental Health Defendants had authority over [Johnson's] cell placement and property only when [Johnson] was on crisis watch." ShortApp.18.

Finally, the district court concluded that Johnson's claims against Wexford itself failed because there was "no underlying constitutional violation." ShortApp.19 (citing *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Pyles v. Fahim*, 771 F.3d 403, 412 (7th Cir. 2014)). The district court did not address Johnson's respondeat superior theory of liability.[12]

3. Proportionality

Finally, the district court concluded that the 24/7 solitary confinement imposed upon Johnson did not constitute excessive punishment. ShortApp.12-13. This was so, the district court determined, because it was "not the result of a single punishment, but rather the cumulative punishments [Johnson] received for numerous disciplinary infractions he committed while housed at Pontiac." ShortApp.12. Johnson, the district court held, "cannot aggregate these punishments to argue that

[12] The district court also concluded that the IDOC Defendants did not provide Johnson with constitutionally inadequate medical care. ShortApp.19. Johnson does not press such a claim on appeal.

the duration of his confinement in segregation resulted in a single, long-term deprivation; instead, the Court must evaluate each punishment separately." *Id*. Considered as a series of discrete punishments, Johnson's nearly four-year 24/7 solitary confinement did not violate the Eighth Amendment. ShortApp.13. The district court also concluded that the exercise restriction could not violate the Eighth Amendment as a matter of law because "[p]rison officials were . . . entitled to attach conditions aimed at addressing legitimate penological concerns upon [Johnson's] access to the yard." ShortApp.15.

The district court issued a final judgment on November 16, 2018, and Johnson timely filed a notice of appeal. App.744. After the district court denied Johnson leave to appeal in forma pauperis ("IFP"), App.745, this Court granted Johnson's IFP motion. DOC 13 at 1.

JURISDICTIONAL STATEMENT

This appeal arises from a case brought in the Central District of Illinois pursuant to 42 U.S.C. § 1983. On November 15, 2018, the district court, which had jurisdiction pursuant to 28 U.S.C. § 1331, granted summary judgment to Defendants on all claims, and entered final judgment on November 16, 2018. On November 29, 2018, Johnson timely filed a notice of appeal. This Court has jurisdiction under 28 U.S.C. § 1291.

STANDARD OF REVIEW

This Court reviews de novo the district court's grant of summary judgment, "construing the facts and drawing all reasonable inferences in [Johnson's] favor." *Isby v. Brown*, 56 F.3d 508, 524 (7th Cir. 2017). Summary judgment is proper if Defendants "show[] that there is no genuine dispute as to any material fact and [they are] entitled to judgment as a matter of law." *Id*. Because Johnson litigated pro se below, his pleadings are "accord[ed] a liberal reading." *Smith v. Dart*, 803 F.3d 304, 309 (7th Cir. 2015).

SUMMARY OF ARGUMENT

1. This Court—indeed, every federal court of appeals to reach the issue—has held that prolonged solitary confinement cannot be imposed without access to regular out-of-cell exercise (whether indoors or outdoors) unless a pressing security concern necessitates this severe restriction. Even assuming a dramatic security risk exists—and it did not here—a prisoner cannot be left for years in 24/7 solitary confinement while his physical and psychological health declines.

These rules makes sense: prolonged solitary confinement even *with* regular out-of-cell access is so psychologically and physically injurious that the constitutionality of the practice has long been questioned. Here, Johnson endured something orders of magnitude worse: prolonged solitary confinement without the weekly salvation of a few hours out-of-cell time. To pile barbarity upon barbarity,

Johnson was confined 24/7 for nearly four years in cells that were dangerously decrepit.

The district court, however, held that Johnson's 24/7 solitary confinement in hazardous cells did not deny him the minimal civilized measure of life's necessities. It could only so conclude by disregarding clear precedent and repetitively resolving material disputes of fact in Defendants' favor despite the summary judgment posture.

The district court also concluded that "no reasonable inference exists" that defendants were deliberately indifferent. ShortApp.16. It did not say why. In fact, every reasonable inference exists.

2. Prison health care providers cannot avoid their duty to provide constitutionally adequate care by providing constitutionally inadequate care. Thus, if a prisoner bleeds to death, one cannot escape liability by offering evidence that a band-aid was applied when a tourniquet was called for. This makes sense. The constitution requires adequate care, not some care. And one cannot evade liability on the basis that a prisoner has a preexisting condition if the quality of care exacerbates that condition. If a diabetic prisoner goes into shock because insulin is denied, the Eighth Amendment does not foreclose liability merely because the inadequate treatment exacerbated but did not cause the disease. The same basic principles control this case.

The district court held that the Wexford Defendants discharged their constitutional duty to Johnson because his mental illness predated his 24/7 solitary confinement and they purportedly did not totally disregard his plight.

Again, its decision is wrong as a matter of law and fact. That Johnson was seriously mentally ill before he arrived at Pontiac did not relieve the Wexford Defendants of their obligation to adequately treat those conditions. Nor did it mean that their consistent refusal to transfer him to a mental health ward or facility and their repetitive prolonging of his 24/7 solitary confinement could not be blamed for the deterioration of his mental health. The Wexford Defendants' actions and inaction made Johnson sicker.

And the Wexford Defendants were deliberately indifferent to that fact. It is obvious to a layperson—let alone a mental health professional—that four years in a box would cause even a sane person's mental health to deteriorate, yet they repeatedly recommended its renewal. That they provided him with medication did not suffice when it was obvious that what he required was transfer to a mental health treatment facility where he could get the treatment, social contact, and out-of-cell time that he required.

What's more, it's not only the individual Wexford mental health professionals who were responsible for these constitutional deprivations. Wexford itself is liable because Johnson put forth evidence that they had a de facto policy of providing

inadequate treatment to seriously mentally ill prisoners in solitary confinement. In the alternative, they are liable under a respondeat superior theory of liability, which Johnson preserved, and this Court has not foreclosed.

3. The Wexford and IDOC Defendants each raised qualified immunity in a single sentence—among a litany of other defenses—in boilerplate fashion in their answer but nowhere else. Accordingly, they have waived the defense. In the alternative, they are not entitled to qualified immunity on any claim in light of the clear precedent providing adequate notice of their unconstitutional conduct.

ARGUMENT

I. The IDOC and Wexford Defendants Inflicted Cruel and Unusual Punishment by Disregarding the Risk and the Reality of Subjecting Johnson to Four Years of Extreme Solitary Confinement in Cells Unfit for Human Habitation Notwithstanding Their Diagnosis of Serious Mental Illness.

An Eighth Amendment claim has two parts: an objective prong (Johnson must have been subjected to a sufficiently severe deprivation) and a subjective prong (Defendants must have been deliberately indifferent to that deprivation). *Delaney v. DeTella*, 256 F.3d 679, 683 (7th Cir. 2001).

Satisfying the objective component requires that Johnson put forth evidence of a deprivation "sufficiently serious" to constitute withholding "the minimal civilized measure of life's necessities." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). This requirement may be satisfied with evidence that prison officials denied

a "single, identifiable human need" such as physical or psychological health, social interaction, or environmental stimulation. *Wilson v. Seiter*, 501 U.S. 294, 304 (1991). "Some conditions of confinement may establish an Eighth Amendment violation in combination when each would not do so alone . . . when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need." *Id*. To satisfy the objective component, a prisoner need not present evidence that conduct has already inflicted physical or psychological injury; risk is sufficient. *Farmer*, 511 U.S. at 834. The objective prong is responsive to "the evolving standards of decency that mark the progress of a maturing society," so it tracks "our growing understanding of human needs and the changing norms of our society." *Delaney*, 256 F.3d at 683 (internal citations and quotations omitted).

Johnson must also satisfy the "subjective component" by presenting evidence that these deprivations were inflicted with "deliberate indifference." *Farmer*, 511 U.S. at 834. A prison official is deliberately indifferent where he "knows of and disregards an excessive risk to inmate health or safety." *Id.* at 837. Knowledge of the risk may be demonstrated by the fact that it was obvious. *Id.* at 842. Further, the duration of the "cruel prison condition may make it easier to *establish* knowledge and hence some form of intent." *Wilson*, 501 U.S. at 300 (emphasis original).

Genuine disputes of material fact remain regarding both elements of Johnson's conditions claim and Defendants are not entitled to judgment as a matter of law.

A. Consigning a Seriously Mentally Ill Prisoner to Extreme Solitary Confinement in Cells Unfit for Human Habitation for Four Years Constitutes a Deprivation of the Minimal Civilized Measure of Life's Necessities.

For nearly four years, the IDOC and Wexford Defendants subjected Johnson to a brutal incarnation of solitary confinement: social isolation and sensory deprivation in unsafe and unsanitary cells without the necessary respite of out-of-cell recreation. By doing so, Defendants have deprived him of the basic human needs of psychological and physical health, social interaction, and environmental stimulation. These privations, individually and cumulatively, exposed Johnson to a substantial risk of serious harm sufficient to satisfy the objective component of the Eighth Amendment.

Justice Kennedy wrote of the "terrible price" imposed by solitary confinement. *Davis*, 135 S. Ct. at 2210. And with good reason: "[i]t is well documented that . . . prolonged solitary confinement produces numerous deleterious harms." *Glossip v. Gross*, 135 S. Ct. 2726, 2765 (2015) (Breyer J., dissenting) (collecting sources). Prisoners exposed to solitary confinement consistently develop some or all of the following psychological injuries: severe depression, hallucination, anxiety, panic, withdrawal, lethargy, cognitive dysfunction, paranoia, memory loss,

insomnia, and stimuli hypersensitivity. *E.g.*, Terry A. Kupers, *Waiting Alone to Die*, in LIVING ON DEATH ROW: THE PSYCHOLOGY OF WAITING TO DIE 47, 53 (Hans Toch & James Acker eds., 2018); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124, 130–31, 134 (2003) (collecting studies); Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH U. J. L. & POL'Y 325, 335–36, 349, 370–71 (2006). Impulse control is also negatively affected by solitary confinement. *E.g.*, Craig Haney, *"Infamous Punishment": The Psychological Consequences of Isolation*, 8 NAT'L PRISON PROJECT J. 1, 6 (1993). And life-threatening behavior, such as suicidal ideation, is all too common among prisoners in solitary confinement. Grassian, *Psychiatric Effects*, *supra*, at 349; Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450, 1453 (2006).

What's more, solitary confinement's injuries are not limited to psychological deterioration. Instead, solitary confinement consistently inflicts physical injuries. *E.g.*, Haney, *Mental Health*, *supra* at 133. For example, isolation often precipitates a decline in neural activity and shrinks the hippocampus and amygdala, structures critical to decision-making, memory, and emotional regulation. *E.g.*, Dana G. Smith, *Neuroscientists Make a Case Against Solitary Confinement*, Scientific American

(Nov. 2018)[13]; Bruce S. McEwen, et al., *Stress Effects on Neuronal Structure: Hippocampus, Amygdala, and Prefrontal Cortex*, 41 NEUROPSYCHOPHARMACOLOGY 3 (2015). "[T]he lack of opportunity for free movement" in solitary is also "associated with more general physical deterioration. The constellations of symptoms include dangerous weight loss, hypertension, and heart abnormalities, as well as the aggravation of pre-existing medical problems." *Williams v. Sec'y Pa. Dep't of Corr.*, 848 F.3d 549, 568 (3d Cir. 2017).

Prisoners suffering from mental illness—whether preexisting or solitary-induced or exacerbated—are disproportionately vulnerable to the well documented psychological and physiological harms caused by solitary confinement, and are also at the greatest risk of having their suffering "deepen into something more permanent and disabling." Haney, *Mental Health*, *supra*, at 142; Craig Haney, *Restricting the Use of Solitary Confinement*, 1 ANN. REV. CRIMINOLOGY 285, 290 (2018). These prisoners are "far less likely to be able to withstand the stress, social isolation, sensory deprivation, and idleness" of solitary confinement. Thomas Hafemeister & Jeff George, *The Ninth Circle of Hell*, 90 Denv. U. L. Rev. 1, 41–41 (2012). For example, when deprived of social interaction, "many prisoners with mental illness experience catastrophic and often irreversible psychiatric deterioration." *Id.* at 38–

[13] s://www.scientificamerican.com/article/neuroscientists-make-a-case-againstsolitary-confinement.

39 (internal quotation marks omitted); *see also, e.g.*, *Scarver v. Litscher*, 403 F.3d 972, 975-76 (7th Cir. 2006) (citing "extensive literature" describing devastating effect of solitary confinement on "mentally disturbed prisoners"); *Sanders v. Melvin*, 873 F.3d 957, 960 (7th Cir. 2017) (combination of "mental illness and prolonged segregation predisposed [prisoner] to self-harm"); *Wallace v. Baldwin*, 895 F.3d 481, 485 (7th Cir. 2018) (similar).

The adverse psychological effects of solitary confinement may persist for decades after prisoners are released into a less restrictive environment such as general population or the community. *E.g.*, Haney, *Restricting the Use*, *supra*, at 297; Terry A. Kupers, *The SHU Post-Release Syndrome: A Preliminary Report*, 17 CORRECTIONAL MENTAL HEALTH REPORT 81, 92 (March/April 2016). Prisoners may continue to endure symptoms of post-traumatic stress and anxiety disorders, suffer from cognitive impairments, a pervasive sense of hopelessness, and experience lasting personality changes such as obsessive-compulsive disorder and emotional instability. *E.g.*, Stanford Univ. Human Rights in Trauma Mental Health Lab, Mental Health Consequences Following Release from Long-Term Solitary Confinement in California: Consultative Report Prepared for the Center for Constitutional Rights 15−25 (2017);[14] Grassian, *Psychiatric Effects*, *supra*, at 353;

[14] https://handacenter.stanford.edu/sites/default/files/publications/mental_health_consequences_following_release_from_long-term_solitary_confinement_in_california.pdf.

Diana Arias & Christian Otto, NASA, Defining the Scope of Sensory Deprivation for Long Duration Space Missions 43 (2011).

The devastating risk of solitary confinement set forth above is reason enough to question its compatibility with the Eighth Amendment. What the Wexford and IDOC Defendants subjected Johnson to, however, was more dangerous by orders of magnitude. Because solitary confinement exposes prisoners—even those who are healthy—to an outsized risk of psychological and physical harm, there is a broad consensus that the sensory deprivation and forced idleness characteristic of it must be punctuated with regular out-of-cell access. Yet Defendants denied Johnson even that modest salvation for nearly four years, further endangering his physical and psychological health. And Defendants also forced Johnson to endure nearly four years of 24/7 solitary confinement in cells that were squalid, excrement-smeared, and sweltering, each a condition this Court has long held exposes prisoners to an unreasonable risk of harm. Although unreasonable risk is enough to satisfy the objective prong of the Eighth Amendment, the record evidence is such that—at a bare minimum—a reasonable factfinder could conclude that Johnson was actually injured psychologically and physically by the ordeal.

The district court, however, concluded that these conditions did not satisfy the objective prong of the Eighth Amendment. It could reach this conclusion only by consistently construing facts in favor of Defendants and disregarding precedent.

First the facts. The district court found that Johnson was not "wholly denied the opportunity to exercise" but rather "could still move around in his cell to a certain extent." ShortApp.15. That finding, however, is inconsistent with the very testimony that it cites:

> Q. So the exercises you could perform out in the yard at Pontiac are essentially the same exercises you could perform in your cell?
>
> A. [Johnson] It's a little bit bigger than the cell, and you have a pull-up bar where you can go out there and work out, and you have your property in your cell. . . . All your property is on the floor…. So my cell was a very small, confined space where I couldn't even move around like I wanted to at times. So, yeah, it's different from being in my cell and being outside my cell.

App.539. To the extent this testimony could even be construed to mean what the district court attributes to it—and it can't—all reasonable inferences must be drawn in Johnson's favor. In any event, the district court's impermissible finding also disregards evidence contained elsewhere in the record. *E.g.*, App.471.

The district court also found that Johnson "cannot show that he suffered adverse health consequences as a result of the denial of access to the yard." ShortApp.15. Specifically, the district court found that "[t]he medical records disclose that [Johnson] reported some improvement in his mental health conditions throughout the relevant timeframe." ShortApp.15. However, the mental health records and other competent evidence—even if not construed in Johnson's favor—show that Johnson careened from one mental health crisis to another from almost

the day he arrived at Pontiac to almost the moment that Defendants belatedly signed off on his transfer to a specialized mental health care unit.[15] Likewise, the district court acknowledged that at least one of Johnson's physical ailments was "due to lack of exercise" but found that "nothing connects this condition with the denial of access to the outdoor recreational yard." ShortApp.15. No other inference is permissible at summary judgment: Johnson could not exercise in his cell or outside of it and a Wexford physician identified lack of exercise as the cause of a physical ailment.

The district court found that Johnson could not have been subjected to a feces-covered cell "for any significant length of time as [he] was housed in a crisis cell with well-being checks conducted every ten (10) minutes." ShortApp.14. The district court, however, did not acknowledge Johnson's evidence that this was a recurrent issue. The district court also found that Johnson could not have experienced oppressive heat with any frequency because he was rotated among cells frequently and "prison officials provided [Johnson] with ice when the temperatures rose and operated fans at the ends of the galleries to alleviate the heat." ShortApp.13-15. The district court did not acknowledge Johnson's evidence that prison officials' response was ineffective in light of the solid door of his solitary confinement cells

[15] The district court found that the Wexford Defendants "had authority over [Johnson's] cell placement . . . only when [he] was on crisis watch." ShortApp.18. Much of the record evidence contradicts that finding. In any event, the finding is immaterial: Johnson was perpetually on crisis watch.

and the tendency of ice to melt. Nor did the district court acknowledge Johnson's allegation that the excessive heat without a fan was a perennial feature of his solitary confinement.

Now the law. More than 100 years ago, the Supreme Court first called attention to the injurious effects of solitary confinement. *In re Medley*, 134 U.S. 160, 168 (1890). More recently, Justice Kennedy described solitary confinement as a "regime that will bring you to the edge of madness, perhaps to madness itself." *Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring). Justice Breyer has emphasized the psychological and physical injury inflicted by prolonged solitary confinement. *Glossip v. Gross*, 135 S. Ct. 2726, 2765 (2015) (Breyer, J., dissenting).

This Court, too, has consistently contributed to this chorus of concern. *E.g.*, *Kervin v. Barnes*, 787 F.3d 833, 837 (7th Cir. 2015) (emphasizing the "serious psychological consequences of quasi-solitary imprisonment" and collecting sources); *Pearson v. Ramos*, 237 F.3d 881, 884 (7th Cir. 2001) (prolonged solitary confinement "can have serious adverse effects on prisoners' psychological well-being"); *Davenport v. DeRobertis*, 844 F.2d 1310, 1313 (7th Cir. 1988) ("pretty obvious that isolating a human being from other human beings year after year or even month after month can cause substantial psychological damage, even if the

isolation is not total").[16] This Court has also recognized that solitary confinement is particularly injurious to mentally ill prisoners. *E.g.*, *Scarver v. Litscher*, 403 F.3d 972, 975-76 (7th Cir. 2006) (solitary confinement "create[s] a substantial risk of causing . . . serious physical and mental suffering" and citing "extensive literature on the effect" of it on "mentally disturbed prisoners").

Johnson, of course, endured something more: solitary confinement without the ability to recreate outside of his cell. As Justice Sotomayor emphasized last year in connection with a not as serious deprivation (the prisoners in that case were afforded daily indoor exercise in a day room) of far shorter duration (11-25 months), there are "clear constitutional problems" with imprisonment in "near-total isolation from the living world, in what comes perilously close to a penal tomb." *Apodaca*, 139 S. Ct. at 10 (Sotomayor, J., respecting denial of cert.). Decades earlier, then Judge Kennedy explained that the isolation of solitary confinement, where prisoners "spent virtually 24 hours every day in their cells with only meager out-of-cell movements and corridor exercise" and "[t]heir contact with other persons was

[16] The story is much the same in other circuits. *E.g.*, *Williams v. Sec'y Pa. Dep't of Corr.*, 848 F.3d 549, 567–68 (3d Cir. 2017) (noting that both "psychological damage" and "[p]hysical harm" can result from solitary confinement, including "high rates of suicide and self-mutilation" as well as "more general physical deterioration"); *Shepard v. Quillen*, 840 F.3d 686, 691 (9th Cir. 2016) (noting "the horrors of solitary confinement"); *Incumaa v. Stirling*, 791 F.3d 517, 534 (4th Cir. 2015) ("Prolonged solitary confinement exacts a heavy psychological toll that often continues to plague an inmate's mind even after he is resocialized.").

minimal," made out-of-cell exercise "a necessity." *Spain v. Procunier*, 600 F.2d 189, 199 (9th Cir. 1979) (Kennedy, J.).

Likewise, in recognition of the dangers inherent to prolonged solitary confinement, this Court has consistently held that ameliorating access to regular out-of-cell recreation is obligatory, at least in the absence of an extraordinary security risk. *E.g.*, *James v. Pfister*, 708 Fed. App'x 876, 877-79 (7th Cir. 2017) (out-of-cell exercise restriction for one year states a claim); *Turley v. Rednour*, 729 F.3d 645, 648 (7th Cir. 2013) (50% out-of-cell exercise restriction spanning period exceeding two years states claim); *Winger v. Pierce*, 325 Fed. Appx. 435, 436 (7th Cir. 2009) (noting that "it is difficult to see how even nine months' deprivation" of exercise "could be deemed consistent with the eighth amendment"); *Delaney v. DeTella*, 256 F.3d 679, 682, 684, 686-87 (7th Cir. 2001) (affirming denial of summary judgment to guards where prisoner in solitary denied out-of-cell exercise for six months, emphasizing that exercise is "a necessary requirement for physical and mental well-being," and faulting Defendants for not offering out-of-cell alternatives which "may have mitigated the severity of a 6-month denial of yard privileges"); *Pearson*, 237 F.3d at 884 ("When unrelieved by opportunities for out-of-cell exercise, [solitary] confinement could reasonably be described as cruel and, by reference to the current norms of American prisons, unusual."); *Antonelli v. Shehan*, 81 F.3d 1422, 1432 (7th Cir. 1996) (seven-week partial restriction on out-of-cell exercise states a claim);

Davenport v. DeRobertis, 844 F.2d 1310, 1315 (7th Cir. 1988) (affirming injunction requiring "at least five hours of exercise time per week" for prisoners in solitary confinement for more than 90 days); *Meriwether v. Faulkner*, 821 F.2d 408, 417 (7th Cir. 1987) (6-month out-of-cell exercise restriction states a claim); *French v. Owens*, 777 F.2d 1250, 1255-56 (7th Cir. 1985) ("Lack of exercise may certainly rise to a constitutional violation" but more than 2 hours a week is sufficient).[17]

Johnson's ordeal is on all fours with these cases with the following exceptions: (1) he endured 24/7 solitary confinement nearly four times longer than the second longest-enduring prisoner (*Pearson*); (2) he was seriously mentally ill, whereas most of the prisoners in the above-cited cases were not; (3) he experienced dramatic psychological and physiological decline, but most of the other prisoners did not; (4) he lived in cells that were sufficiently unsanitary, hot, and noisy to independently satisfy the objective prong, but most of the other prisoners did not.

[17] Again, this Court's case law is consistent with its sister circuits. *E.g.*, *Thomas v. Ponder*, 611 F.3d 1144, 1151 (9th Cir. 2010) (14-month denial states a claim); *Perkins v. Kansas Dep't of Corrections*, 165 F.3d 803, (10th Cir. 1999) (nine-month denial establishes genuine issue of material fact); *Jolly v. Coughlin*, 76 F.3d 468, 480 (2d Cir. 1996) (approximately three years without out-of-cell exercise as sanction for refusal to take tuberculosis test demonstrated substantial likelihood of success on the merits of Eighth Amendment claim); *Mitchell v. Rice*, 954 F.2d 187, 192 (4th Cir. 1992) (holding that "seven months and eleven months, without any opportunity for out-of-cell exercise . . . . could be said to violate our evolving constitutional standards of decency.")).

Nor did Johnson's misconduct necessitate the restriction. Neither the Wexford nor the IDOC Defendants asserted before the district court that the 24/7 solitary confinement was compelled by a pressing security need. It is too late to do so now. *See Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012) ("It is a well-established rule that arguments not raised to the district court are waived on appeal."); *Fednav Int'l Ltd. v. Cont'l Ins. Co.*, 624 F.3d 834, 841 (7th Cir. 2010) (citations omitted) (similar).

The district court raised the issue *sua sponte* and concluded that "[p]rison officials were . . . entitled to attach conditions aimed at addressing legitimate penological concerns upon [Johnson's] access to the yard." ShortApp.15. The district court referenced only Johnson's failure to keep his cell "orderly" as motivating the restriction. *Id*. Such an infraction cannot provide the predicate for a four-year 24/7 solitary confinement stint. *E.g.*, *Pearson v. Ramos*, 237 F.3d 881, 884–85 (7th Cir. 2001) (finding no Eighth Amendment violation where inmate was punished with consecutive sanctions, each of 90 days without yard, based on infractions where inmate attacked and beat a guard who required hospitalization, started a fire, assaulted another guard, and threw bodily fluids at a medical technician).

Assuming that the district court instead intended to refer to the constellation of misconduct detailed above, some or all of which was occasioned by Johnson's

mental illness, the outcome remains the same. "[T]o deny a prisoner *all* opportunity for exercise outside his cell would . . . violate the Eighth Amendment unless the prisoner posed an acute security risk if allowed out of his cell for even a short time." *Delaney v. DeTella*, 256 F.3d 679, 687 (7th Cir. 2001) (quoting *Anderson v. Romero*, 72 F.3d 518, 527 (7th Cir. 1995)). Johnson did not pose a sufficiently serious security threat. *Compare Walker v. Shansky*, 28 F.3d 666, 668-69, 672-73 (7th Cir. 1994) (reversing grant of summary judgment for guards where mentally ill prisoner who hurled feces at guards was subjected to a ten-month partial denial of out-of-cell recreation) *with Scarver*, 403 F.3d 973, 97-78 (permissible to deny *outdoor* recreation after prisoner murdered two others).

Pearson compels the same result.[18] There a prisoner "attacked and beat a guard, injuring him seriously enough to require his hospitalization," "set fire to

[18] The district court thought *Pearson* was relevant in a different way, and, in the alternative, evaluated Johnson's four-year solitary confinement under a proportionality framework. ShortApp.12-13. The district court held that nearly four years of 24/7 solitary confinement did not constitute the sort of excessive punishment that is forbidden by the Eighth Amendment. *Id*. This was so because it was (1) meted out in drips and drabs rather than in one fell swoop and (2) inflicted in response to Johnson's behavior. *Id*. As an initial matter, Johnson isn't challenging the outcome of disciplinary proceedings, he's challenging the conditions of his confinement. *See Pearson*, 237 F.3d at 888 (Ripple, J., concurring) ("The problem before us does not require that we simply measure against Eighth Amendment standards the length of a prison sentence. Rather, this case concerns conditions of confinement."). Even if he were, *Pearson* does not support Defendants' position: Johnson's term of 24/7 solitary confinement exceeded Pearson's by nearly 400% notwithstanding the fact that Pearson's misconduct was objectively more significant

blankets, coats, and cardboard boxes, producing so much smoke that prisoners with respiratory problems had to be evacuated," "spit in the face of a guard who was trying to restrain him after the plaintiff had assaulted another guard," and "threw a broom and a bottle of unspecified 'bodily fluids' at a medical technician, and the fluids got on the victim's face." 237 F.3d at 885. This Court held that four 90-day out-of-cell exercise restrictions imposed in response to the prisoner's "violent propensities" did not violate the Eighth Amendment. *Id*. at 885-86.

Johnson is situated differently. First, unlike the plaintiff in *Pearson*, Johnson is seriously mentally ill, which enhances the psychological and physical consequences of the restriction, and implicates intent. Even Defendants concede that some of Johnson's misconduct was occasioned by his mental illness, a factor that distinguishes this case from Pearson.[19] Second, Johnson's conduct—while not commendable—did not approach the level of violence at issue in *Pearson*. Third, Johnson repeatedly set forth a viable alternative to 24/7 solitary confinement—*i.e.*, transfer to a specialized mental health ward. 24/7 solitary confinement was not the

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than Johnson's. One final point merits mention: the district court's conclusion is illogical. Prison officials are not free to cause injury by a thousand cuts that they would be prohibited from inflicting with one.

[19] The district court also quoted *Rodriguez v. Briley*, 403 F.3d 952, 952-953 (7th Cir. 2005), for the proposition that that "deliberate noncompliance with a valid rule does not convert the consequences that flow automatically from that noncompliance into punishment," ShortApp.15, but not this Court's caveat that the proposition might not apply if "noncompliance with the rule were a product of insanity."

only possible solution here. *E.g.*, Brief of Corrections Experts as Amici Curiae, *Latson v. Clarke,* No. 18-02457, at 1 (4th Cir. Feb 11, 2019) (outlining "alternative prison management methods [that] have successfully eliminated prolonged solitary confinement while decreasing prison violence"). Fourth, Johnson was confined to 24/7 solitary confinement for a period nearly 400% longer than that at issue in *Pearson*. Finally, even if a valid security concern did exist, "such concerns do not explain why other exercise arrangements are not made." *E.g.*, *Thomas v. Ponder*, 611 F.3d 1144, 1154-55 (9th Cir. 2010); *Housley v. Dodson*, 41 F.3d 597, 599 (10th Cir. 1994), overruled on other grounds (holding that even a convicted murderer who had murdered another inmate and represented a major security risk was entitled to out-of-cell exercise).

There is yet another way in which Johnson's 24/7 solitary confinement despite his serious mental illness was a graver ordeal than that at issue in this Court's prior cases. Filth, extreme heat, and incessant noise from mentally ill prisoners has also been held time and again by this Court to satisfy the objective prong of the Eighth Amendment. *E.g.*, *Cobian v. McLaughlin*, 17 F. App'x. 605, 611 (7th Cir. 2017) (consignment for a month to solitary cell with "feces from a previous occupant" states a claim); *Rice v. Correctional Medical Services*, 675 F.3d 650, 663-65 (7th Cir. 2012) (evidence of "filthy and unsanitary" cell "sometimes caked with his own feces" sufficient to survive summary judgment motion even though plaintiff

"himself created the unsanitary conditions"); *Myrick v. Anglin*, 496 F. App'x 670, 673-75 (7th Cir. 2012) (finding that exposure to dust from the vents in a cell, which caused the inmate "pain and difficulty breathing" was sufficient to state an Eighth Amendment claim); *White v. Monohan*, 326 F. App'x 385, 387 (7th Cir. 2009) (reversing the district court and finding that an inmate sufficiently stated an Eighth Amendment conditions of confinement claim because the cell's temperature could at times exceed 110 degrees); *Vinning-El v. Long*, 482 F.3d 923, 923-25 (7th Cir. 2007) (presence of feces inside a cell could be considered sufficiently serious for purposes of objective prong); *Board v. Farnham*, 394 F.3d 469, 485-86 (7th Cir. 2005) (finding that poor ventilation resulting in "numerous nosebleeds and respiratory problems" and exacerbating an inmate's asthma condition violates the Eighth Amendment); *Turley v. Bedinger* 542 Fed App'x 531, 533 (7th Cir. 2003) (finding that prisoner's confinement in a "tiny, cramped, poorly ventilated cell, exacerbated by his inability to leave it for exercise," which caused his "respiratory difficulty, gastrointestinal problems, and anxiety" was sufficient to state an Eighth Amendment claim); *Antonelli v. Sheahan*, 81 F.3d 1422, 1433 (7th Cir. 1996) (continuous noise that "interrupt[s] or prevent[s]" sleep states an Eighth Amendment claim); *Johnson v. Pelker*, 891 F.2d 136, 139-40 (7th Cir. 1989), (reversing summary judgment on Eighth Amendment claim where a prisoner was held for three days in a cell that was smeared with human feces).

The district court made one final legal error in evaluating the objective prong. It paid lip service to the requirement to consider in combination those conditions of confinement that have a mutually reinforcing deleterious effect. It did not say why it failed to conduct the required analysis. But it's clear that each deprivation endured—seriously mentally ill prisoner in prolonged solitary confinement, no out-of-cell access, in hazardous conditions—worked in concert to deny Johnson a "single, identifiable human need": physical and psychological health. *See Wilson*, 501 U.S. at 304.

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In light of this Court's case law, the scientific consensus, and Johnson's own evidence, no reasonable factfinder could conclude that the extraordinary incarnation of solitary confinement imposed upon him does not constitute a sufficiently serious deprivation of basic human needs that risks—and, in fact, has already inflicted—substantial harm. The objective prong is satisfied for purposes of summary judgment.

B. The IDOC and Wexford Defendants Turned a Blind Eye to this Objectively Serious Risk of Harm.

On the record before this Court, a reasonable fact finder could also determine that the IDOC and Wexford Defendants knew well that prolonged 24/7 solitary confinement in squalid and sweltering cells exposed Johnson to an excessive risk of serious harm yet refused to mitigate the severity of that risk by permitting him out-

of-cell time or transferring him to a specialized mental health care unit. In fact, no reasonable fact finder could hold otherwise in light of the following evidence: First, Johnson told the IDOC and Wexford Defendants that the conditions they subjected him to were injuring him. Second, Defendants' own policies and practices emphasize the dangers of the conditions they exposed him to. Third, the obvious nature of the risk suffices.

1. Johnson Told Defendants That 24/7 Solitary Confinement in Hazardous Cells Was Injuring Him, They Witnessed His Deterioration, and At Least One Defendant Conceded That 24/7 Solitary Was Contraindicated.

For years, Johnson told the Wexford and IDOC Defendants that 24/7 solitary confinement in hazardous cells was injuring him. He filed grievances to the same effect, *e.g.*, App.29-30, 32-33, 35-36, 42-43, 45-46; App.136-38, 143-48, 149-50, which provided additional notice. *See Turley*, 729 F.3d at 653. Defendants witnessed him deteriorating for years. And Johnson proffered evidence to the effect that the IDOC and Wexford Defendants routinely inflicted prolonged solitary confinement in hazardous conditions on seriously mentally ill prisoners. App.116-42; ECF 55 at 1-20. That evidence, too, suggests that Defendants were on notice. Finally, at least one Wexford Defendant reported that 24/7 solitary confinement was contraindicated.

On this evidence alone, a factfinder could determine that Defendants turned a blind eye to the serious risk of harm they exposed Johnson to, but that is not the only evidence of deliberate indifference.

2. *IDOC's Policies and Experience Reflect Defendants' Knowledge That Solitary Confinement Without Out-of-Cell Exercise Is Dangerous for All Prisoners and Particularly for Mentally Ill Prisoners.*

IDOC's policies and practices, which IDOC and Wexford Defendants implement, also emphasize their knowledge that isolation without out-of-cell access is dangerous.

First, IDOC policies—as reflected in its Mental Health Protocol Manual—acknowledge that "the risk for psychological decomposition is prevalent for any offender under segregation," but note that "the mentally ill offender is at a heightened risk." ECF 59 at 10. The same document reports that "[t]he needs of the segregated offender are unique, particularly the needs of segregated offenders with mental health issues." ECF 59 at 54.

Likewise, the Illinois Administrative Code provides that "[o]ffenders in segregation status shall be afforded the opportunity to recreate outside their cells a minimum of eight hours per week." Ill. Admin. Code tit. 20 § 504.670 (2017). In the IDOC Mental Health Protocol Manual, patient response to treatment is measured in part by the "ability to participate in . . . opportunities for fitness . . . and social activities." ECF 59 at 24-25. The section in the Manual, titled, "Understanding and Coping with Depression," acknowledges that "the offender population is at risk for suicide" and emphasizes the importance of "[a] healthy life style including diet, *exercise* and good sleep." ECF 59 at 24 (emphasis added).

Second, prior litigation provided Defendants with some notice. *See Turley*, 729 F.3d at 653 (noting that numerous past lawsuits against prison alleging similar claims should have made it "well aware" of challenged conditions). In *Rasho v. Walker*, No. 1:07-CV-1298-MMM-JEH (C.D. Ill. filed Jan. 7, 2007), which Johnson cited extensively, the "Agreed Order" reflects Defendants' knowledge of the harms of unsanitary conditions of solitary confinement while being deprived of out-of-cell exercise. Agreed Order, *Rasho v. Walker*, No. 1:07-CV-1298-MMM-JEH (C.D. Ill. May 8, 2013), Dkt. No. 132. And that is not the only case in which the IDOC has conceded that solitary confinement is hazardous. *See Davenport*, 844 F.2d at 1313 (IDOC medical director conceded "that four to seven hours of exercise outside the cell…are the weekly minimum necessary to prevent serious adverse effects on the physical and mental health of inmates confined…in…a form of solitary confinement.").

Defendants' own policies and practices reflect their acknowledgment that solitary confinement is hazardous, yet they inflicted upon a seriously mentally ill prisoner a particularly cruel incarnation of it for nearly four years. At the very least, that creates a genuine dispute of material fact regarding their indifference to Johnson's health.

3. *The Risks to a Seriously Mentally Ill Prisoner of 24/7 Solitary Confinement Are Obvious.*

It seems unnecessary to explain that it is also "obvious" that nearly four years of solitary confinement without out-of-cell recreation risked serious damage to Johnson. *See Davenport*, 844 F.2d at 1313 (solitary confinement "involves considerable isolation" and it "seems pretty obvious" that "isolating a human being form other human beings year after year or even month after month can cause substantial psychological damage, even if the isolation is not total"). But it is important to note that even if a court were to disregard Johnson's evidence, and Defendants' policies and practices, a factfinder could nonetheless conclude that they were deliberately indifferent. Beyond the fact that all humans are "literally wired to connect to others," Craig Haney, *Restricting the Use of Solitary Confinement*, 1 ANN. REV. CRIMINOLOGY 285, 296 (2018) (internal quotations omitted), condemnation of prolonged solitary as unreasonably dangerous is sufficiently widespread that it is difficult to imagine that anyone—let alone someone administering or providing healthcare in a prison—could remain unaware to its dangers.

First, the condemnation of the practice by *correctional experts* is well-documented. For example, the Association of State Correctional Administrators ("ASCA"), of which IDOC is a member, has acknowledged the harm caused by solitary and noted that "[c]orrectional leaders across the country are committed to

reducing the number of people in restrictive housing and altering what it means to be there." Press Release, ASCA, *New Report on Prisoners in Admin. Segregation Prepared by the [ASCA] and the Arthur Liman Pub. Interest Program at Yale Law Sch.* (Sept. 2, 2015)[20]; *see also* ASCA Restrictive Status Housing Policy Guidelines (Aug. 9, 2013) (similar).[21]

Moreover, it is difficult to imagine that a correctional professional would not notice that solitary confinement reforms have been occurring at both the state and federal level for years. At the state level, for example, comprehensive reforms focused on reducing solitary confinement and improving the conditions of such confinement are in effect or underway in a majority of states. *See* Maurice Chammah, Stepping Down from Solitary Confinement, The Atlantic, Jan. 7, 2016 (noting that since 2009 at least 30 states have undertaken such reforms)[22]; U.S. DOJ Final Report, R. & R. Concerning the Use of Restrictive Housing, at 72-78 (discussing state level reforms).[23] Indeed, testimony about the harrowing experiences of solitary confinement have pushed Illinois lawmakers to consider restricting the use of such practices. *Illinois Seeks to Limit Use of Solitary*

[20] https://law.yale.edu/yls-today/news/asca-and-liman-center-release-two-newreports-solitary-confinement.
[21] https://asca.memberclicks.net/assets/docs/9.pdf.
[22] https://www.theatlantic.com/politics/archive/2016/01/solitaryconfinementreform/422565/.
[23] https://www.justice.gov/archives/dag/file/815551/download.

Confinement, Chicago Tribune, April 24, 2016.[24] The picture is no different in the federal system where, following the U.S. Government Accountability Office's (GAO) 2013 report on the Federal Bureau of Prison (BOP)'s use of solitary, the BOP agreed to reduce its segregated population. U.S. GAO, Improvements Needed in [BOP] Monitoring and Evaluation of Impact of Segregated Houses, at 61-65, May 2013.[25] In January 2016, the U.S. Department of Justice issued a Report and Recommendations on solitary confinement, calling for a number of reforms aimed at reducing its use. U.S. DOJ Final Report, supra, at 104-21.

As set forth above, it is the scientific consensus that solitary confinement is profoundly dangerous. That is not a recent development. *E.g.*, Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 8 In'tl J.L. & Psychiatry 49 (1986).

Moreover, the hazards of solitary confinement have long been a frequent topic of discussion in the mainstream press. *E.g.*, Ifer Warren, *A Modern-Day Dungeon?*, Los Angeles Times, Sept. 7, 1993; Julia Cass, *For Worst Inmates, 'Supermax' Hard Time*, Philadelphia Inquirer, July 25, 1994; Sean Murphy, *Walpole Inmates Challenge Isolation, Lawsuits Claim Facility Inhumane*, Boston Globe, Sept. 5, 1994; John Gonzalez, *Prison Expert: State's Solitary Cells Inhumane*, Houston

[24] https://www.chicagotribune.com/news/ct-illinois-solitary-confinement-20160424-story.html.
[25] http://www.gao.gov/assets/660/654349.pdf.

Chronicle, Feb. 5, 1999; Ralph Ranalli, *Foes Say The Practice Is Unjust And May Lead To Mental Injury For Some Detainees, Boston Globe*, Oct. 29, 2000; *Isolation of Mentally Ill Inmates Criticized*, Chicago Tribune, Sept. 30, 2002; Kevin Johnson, *After Years In Solitary, Freedom Hard To Grasp. Ex-cons Face Long Odds On Release From Isolation*, USA Today, June 09, 2005; Abigail Curtis, *Is Solitary Confinement Torture: Proposed Bill Would Place Limits On Use Of Solitary Confinement In State Prison*, McClatchy, Oct. 24, 2009; Atul Gawande, *Hellhole: The United States Holds Tens of Thousands of Inmates in Long-term Solitary Confinement. Is This Torture?*, The New Yorker, Mar. 30, 2009; Rick Raemisch, *My Night in Solitary*, Opinion, N.Y. Times, Feb. 20, 2014; Rich Lord, *More Work To Be Done; Feds Close Review Of Pennsylvania's Use Of Solitary Confinement*, Pittsburgh Post-Gazette, Apr. 15, 2016.

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In light of this evidence, Defendants were deliberately indifferent.

II. The Wexford Defendants Denied Johnson Constitutionally Adequate Healthcare by Persisting in a Course of Treatment They Knew Was Ineffective.

"[Officials] violate the Eighth Amendment's proscription against cruel and unusual punishment when they display 'deliberate indifference to serious medical needs of prisoners.'" *Greeno v. Daley*, 414 F.3d 645, 652 (7th Cir. 2005) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104, 97 (1976)). Like a conditions of confinement

claim, an inadequate medical care claim has an objective and a subjective prong: medical needs must be objectively serious and prison personnel must deliberately disregard those needs. *Id.* at 653.

A medical condition requiring treatment is objectively serious. *Id.* Johnson's serious mental illness therefore satisfies the objective prong.

Regarding the subjective prong, providing *some* treatment is not the same as providing *adequate* treatment. *Id.* at 653–54. That is, ineffective treatment can violate the Eighth Amendment just as surely as no treatment. *Id.* And prison personnel have an obligation to treat even those conditions that predate their imprisonment. *See Burks v. Raemisch*, 555 F.3d 592, 593–94 (7th Cir. 2009) (holding that plaintiff adequately pled deliberate indifference claim against prison medical official for medical condition that predated imprisonment).

Notwithstanding these longstanding rules, the district court held that the Wexford Defendants discharged their constitutional duty to Johnson because his mental illness predated his 24/7 solitary confinement and they purportedly did not totally disregard his plight. Its decision is wrong as a matter of fact and a matter of law.

Starting with the facts. Whether the Wexford Defendants totally disregarded Johnson's plight was not a question the district court was free to answer in favor of Defendants in light of the summary judgment record: The Wexford Defendants

repeatedly prescribed Johnson psychotropic medication and placed him in a crisis cell despite their knowledge that such "treatment" was ineffective. For years, Johnson told the Wexford Defendants what his medical records made clear all the same: treatment by ever-changing psychotropic cocktail and crisis chamber was not doing him any good yet was needlessly prolonging his suffering. Still, it took the Wexford Defendants nearly four years to sign off on his transfer to a mental health unit, a delay they attributed to a shifting rationale. At the very least, this raises a disputed material fact concerning whether impermissible reasons—*e.g.*, cost concerns—or permissible reasons—e.g., sound medical judgment—motivated their treatment decisions.

Turning to the law. That Johnson was classified seriously mentally ill from the moment he arrived at Pontiac does not have any legal significance. All prisoners are entitled to adequate medical care, even those with preexisting conditions. Likewise, providing some care does not discharge the constitutional obligation to provide reasonably effective care. *Greeno v. Daley*, 414 F.3d at 645 (noting that persistence in a course of treatment "known to be ineffective" violates the Eighth Amendment); *Gonzalez v. Feinerman*, 663 F.3d 311, 315 (7th Cir. 2011) (similar); *Berry v. Peterman*, 604 F.3d 435, 441 (7th Cir. 2010) (pursuing "less efficacious treatment for an objectively serious medical condition" impermissible). This is particularly so where, as here, Johnson routinely informed the Wexford Defendants

that the combination of psychotropic medication plus isolation cells was ineffective. *See Greeno*, 414 F.3d at 654 (factfinder could infer medical defendants were deliberately indifferent to a serious medical need "from the medical defendants' obdurate refusal to alter [the inmate's] course of treatment despite his repeated reports that the medication was not working and his condition was getting worse.").

Finley v. Huss, 723 Fed. Appx. 294, 298 (6th Cir. 2018) (unpublished), is particularly on point. There, a seriously mentally ill prisoner brought an Eighth Amendment challenge after he was consigned to solitary confinement for several months where he was medicated with psychotropic drugs in lieu of release to a specialized treatment facility. *Id*. at 295. The district court dismissed the cases in light of the fact that Finley "had received some treatment in the form of antipsychotic drugs." *Id*. at 298. That wasn't enough. As the Sixth Circuit explained in reversing, "[a]lthough officials can avoid constitutional liability by addressing the inmate's serious need, they cannot escape a deliberate-indifference claim by fetching a band-aid if an inmate is hemorrhaging." *Id.* (citing *Bays v. Montmorency County*, 874 F.3d 264, 269 (6th Cir. 2017)). In fact, "claiming that medication makes [solitary confinement] permissible is a little like bandaging a person's broken leg but then taking away his crutches. *Id*. at 298-99.

Ultimately, the Wexford Defendants conceded that Johnson was better suited for treatment in a specialized treatment unit in part because he had a "lengthy history

of crisis watch placement as a result of reported suicidal . . . ideations" and had "an inability . . . to consistently adhere to treatment regimen for management of bipolar symptoms[, which] substantiae[d] referral for residential level of care." App.458. None of those discoveries was new. Rather, they were ancient history by the time the Wexford Defendants finally agreed to transfer Johnson to a specialized treatment facility.

What's more, it's not only the individual Wexford mental health professionals who were responsible for these constitutional deprivations. Wexford itself is liable because Johnson put forth sufficient evidence amounting to a de facto policy of providing inadequate mental health care to seriously mentally ill prisoners in solitary confinement to bring the claim against Wexford to trial. *Glisson v. Indiana Dep't of Corr.*, 849 F.3d 372, 380 (7th Cir. 2017) (en banc). In the alternative, Johnson alleged that Wexford itself is liable under a respondeat superior theory of liability. App.535.

This circuit, like every other circuit court that has addressed the issue, has held that the *Monell* theory of municipal liability applies in § 1983 claims brought against private companies that act under color of state law. *Shields v. Ill. Dep't of Corr.*, 746 F.3d 782 (7th Cir. 2014); *see also Whiting v. Wexford Health Sources, Inc.*, 839 F.3d 658, 664 (7th Cir. 2016). To prevail on his *Monell* claim, Johnson must show that Wexford's policy or "practice or custom that, although not officially authorized, is

widespread and well settled," caused a constitutional violation. *Thomas v. Cook Cty. Sheriff's Dep't*, 604 F.3d 293, 303 (7th Cir. 2009); *see also Whiting*, 839 F.3d at 664. Johnson has done so.

As an initial matter, the persistent misconduct against Johnson documented in the record is sufficient to establish a de facto policy on the part of Wexford of denying adequate mental health treatment, including delaying transfer to a specialized treatment center. As this Court noted in *Thomas*, a "plaintiff must demonstrate that there is a policy at issue rather than a random event," which "may take the form of an implicit policy or a gap in expressed policies," or "a series of violations to lay the premise of deliberate indifference." 604 F.3d at 303 (internal citations omitted). Demonstrating that there is a policy does not, however, require that the implicit policy, gap in expressed policies, or series of violations be shown against more than one individual. *Turpin v. Mailet*, 619 F.2d 196, 202 n.7 (2d Cir. 1980) ("Though *Monell* was concerned with a general policy enforced against a large class of individuals, it seems reasonable to conclude that its teachings are equally applicable to a specific policy directed at just one individual, as long as the pleaded facts support the inference that unconstitutional action was taken against the individual pursuant to such policy."). Plaintiffs must demonstrate a "widespread custom or practice" and "show that their injuries were caused by the policies or practices complained of." *Thomas*, 604 F.3d at 303, 306. Johnson has done both.

Moreover, Johnson has proffered evidence that Wexford personnel has a widespread practice of providing constitutionally inadequate treatment to other mentally ill prisoners. App.116-42; ECF 55 at 1-20.

Second, Wexford, a private corporation in the business of providing correctional healthcare, should not enjoy a special exemption from the ordinary rules of corporate liability—in this case, respondeat superior—when its employees violate the Constitution. As Judge Hamilton recently noted, whether respondeat superior liability is available to hold private corporations liable in § 1983 actions is an open question in the Seventh Circuit. *Gaston v. Ghosh*, No. 17-3618, 2019 WL 1467118, at *4 (7th Cir. Apr. 3, 2019) ("For reasons explained in *Shields v. Illinois Dep't of Corrections*, 746 F.3d 782 (7th Cir. 2014), whether we should continue to apply the *Monell* standard to private corporations when they act under color of state law presents a substantial question.").

Judge Hamilton highlighted that plaintiffs advancing a respondeat superior theory against a corporation in a § 1983 action must demonstrate deliberate indifference, which can be shown on the part of an individual employee. *Id.* ("The legally simplest case would prove that a specific, identified employee acted with the required deliberate indifference. The employer would then be vicariously liable for its employee's tort committed within the scope of employment."). Johnson preserved the issue of respondeat superior liability below by alleging that Wexford was liable

because they employed the individual mental healthcare provider defendants, and he has demonstrated the requisite deliberate indifference on the part of those individual employees.

III. Defendants Waived The Affirmative Defense of Qualified Immunity By Not Raising It At Summary Judgment.

The Wexford and IDOC Defendants raised qualified immunity in a single sentence—among a litany of other defenses—in boilerplate fashion in their answer but nowhere else. *See* ECF 33 at 5; ECF 35 at 2. Accordingly, they have waived the defense. *E.g.*, *Maul v. Constan*, 928 F.2d 784, 785-86 (7th Cir. 1991); *Walsh v. Mellas*, 837 F.2d 789, 799-799 n.6 & n.7. (7th Cir. 1988). In any event, they would not be entitled to qualified immunity on any of Johnson's claims given the clarity of controlling precedent.

CONCLUSION

For the aforementioned reasons, this Court should vacate the district court's summary judgment order.

Date: May 1, 2019

Respectfully Submitted,

/s/ Daniel M. Greenfield

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 11,374 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word 2016 and Times New Roman 14-point font.

Date: May 1, 2019

/s/ Daniel M. Greenfield
Daniel M. Greenfield
Attorney for Appellant Michael Johnson

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2019, I electronically filed the foregoing Appellant's Corrected Opening Brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Date: May 1, 2019 *<u>/s/ Daniel M. Greenfield</u>*

Daniel M. Greenfield

Attorney for Appellant Michael Johnson

STATEMENT PURSUANT TO CIR. R. 30(d)

I hereby certify that all materials required by Circuit Rules 30(a) and (b) are included within this appendix.

/s/ Daniel M. Greenfield
Daniel M. Greenfield

No. 18-3535

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MICHAEL JOHNSON,

Plaintiff-Appellant,

v.

SUSAN PRENTICE, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of Illinois, No. 1:16-cv-1244
Before the Hon. Colin S. Bruce

SHORT APPENDIX OF APPELLANT MICHAEL JOHNSON

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Short Appendix (bound with brief)

Appendix, Vol. I (App. 1-App. 254) (bound separately)

Appendix, Vol. II (App. 255-App. 511) (bound separately)

Appendix, Vol. III (App. 512-App. 755) (bound separately)

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

MICHAEL JOHNSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	16-1244
	)	
SUSAN PRENTICE, *et al.*	)	
	)	
Defendants.	)	

SUMMARY JUDGMENT ORDER

Plaintiff, proceeding pro se and presently incarcerated at Joliet Treatment Center, brought the present lawsuit pursuant to 42 U.S.C. § 1983 alleging inadequate mental health and medical care and inhumane conditions of confinement arising from events that occurred while he was incarcerated at Pontiac Correctional Center. The matter comes before this Court for ruling on the Defendants' respective Motions for Summary Judgment. (Doc. 76, 92). The motions are granted.

PRELIMINARY MATTERS

Plaintiff's Motions to Request Counsel (Docs. 104, 105)

Plaintiff has no constitutional or statutory right to counsel in this case. In considering the Plaintiff's motion, the court asks: (1) has the indigent Plaintiff made a reasonable attempt to obtain counsel or been effectively precluded from doing so; and if so, (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself? *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007). Plaintiff previously made a showing that he attempted to obtain counsel on his own.

As to the second prong, the Court conducted a detailed analysis of Plaintiff's capacity to represent himself at this stage of the proceedings in its Order entered August 29, 2018. *See* (Doc. 101). The Court assumes familiarity with that Order.

In his current motions, Plaintiff asserts that he has completed some high school, that he currently takes medications to treat diagnosed mental illnesses, and, because he is mentally ill, he suffers from mental breakdowns when things are overwhelming. Plaintiff also asserts that the issues in this case are overly complex, but he does not elaborate further.

Plaintiff attached a document dated May 5, 2018, describing an episode Plaintiff experienced while he was incarcerated at Dixon Correctional Center. (Doc. 105-1). The Court has already addressed the contents of this document in its previous rulings on Plaintiff's motions for recruitment of counsel. *See* Text Order dated Aug. 6, 2018; (Doc. 101). Plaintiff does not provide any new information on this point or any other point the Court previously considered. Further, Plaintiff has since filed a response to Defendants' motion for summary judgment. (Doc. 108). In the response, Plaintiff adequate conveys the facts of the case and, although he does not appear to have attached the documents he cites, Plaintiff provides specific dates that the Court can cross-reference with the available medical records. As explained in the Court's previous order, this was all that was required at this stage in the proceedings. Accordingly, for these reasons and the reasons stated in the Court's previous orders, Plaintiff's motions for recruitment of counsel are denied.

Plaintiff's Motions (Docs. 102, 103, 106, 107)

Plaintiff's motions seek this Court's recusal from this matter. 28 U.S.C. § 455 requires a judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned. However, the negative bias or prejudice from which the law of recusal protects a

party must be grounded in some personal animus or malice that the judge harbors against him, of a kind that a fair-minded person could not entirely set aside when judging certain persons or causes. *Hook v. McDade*, 89 F.3d 350, 355 (7th Cir. 1996). In addition, this bias must...arise from an extrajudicial source. *Id.* Finally, recusal is required only if actual bias or prejudice is proved by compelling evidence. *Id.* (citing *U.S. v. Balistrieri*, 779 F.2d 1191, 1202 (7th Cir. 1985)).

Plaintiff accuses the Court of "attacking" him and "making every effort to make this case difficult for [him]." (Doc. 102). Plaintiff has not provided any evidence of the Court's bias other than his own beliefs that the Court erred in its rulings on his motions seeking recruitment of counsel. Speculative personal opinions are not sufficient to obligate the Court to further explore Plaintiff's allegations. *Willis v. Freeman*, 83 Fed. Appx. 803, 805 (7th Cir. 2003) (citing *O'Regan v. Arbitration Forums, Inc.*, 246 F.3d 975, 988-89 (7th Cir. 2001)). Furthermore, "judicial rulings alone almost never constitute a valid basis for a recusal motion." *Id.* (quoting *Grove Fresh Distrs., Inc. v. John Labatt*, 299 F.3d 635, 640 (7th Cir. 2002)). The other matter Plaintiff alleges in his most recent motion is not related in any way to this lawsuit. To the extent that Plaintiff seeks this Court's recusal, the motions are denied.

Plaintiff also seeks a transfer of venue to the Northern District of Illinois. (Doc. 103). Venue for federal civil rights actions brought under 42 U.S.C. § 1983 is governed by 28 U.S.C. § 1391(b). According to that statute, such actions may be brought only in (1) the judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought. *Id.*

Plaintiff concedes in his motion that the relevant events took place within this judicial district. Nonetheless, Plaintiff seeks transfer to the Northern District, where he currently resides, "for purposes of having a judge to look at this case with new eyes [and] having a judge who is not colluding with the Defendants seeking to sabotage [his] case…." Plaintiff provides no evidence supporting these allegations and any complaints of bias were addressed above. The Court sees no basis to transfer this case for the reasons Plaintiff sets forth. Accordingly, Plaintiff's request for a transfer of venue is denied.

Plaintiff's Motion to Withdraw Deidre Marano (Doc. 96)

The Court interprets Plaintiff's request to withdraw Deidre Marano as a motion to voluntarily dismiss this defendant from the lawsuit. The motion is granted.

LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). All facts must be construed in the light most favorable to the non-moving party, and all reasonable inferences must be drawn in his favor. *Ogden v. Atterholt*, 606 F.3d 355, 358 (7th Cir. 2010). The party moving for summary judgment must show the lack of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In order to be a "genuine" issue, there must be more than "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

FACTS

Plaintiff was incarcerated at Pontiac Correctional Center ("Pontiac") from March 2013 until December 2016. Defendants Moss, Haag, Duckworth, McCormick, Ojelade, Lanterman, Tilden, and Wexford Health Sources, Inc. were responsible for Plaintiff's mental health and medical care at Pontiac. Defendant Moss, Haag, Duckworth, and Lanterman were mental health professionals; Defendant McCormick was a psychiatrist; Defendant Tilden was a physician; and, Defendant Ojelade was a physician's assistant. Defendant Wexford Health Sources, Inc. ("Wexford") employed these defendants in its capacity as the company contracted to provide medical and mental health services at Illinois prisons.

The remaining Defendants (collectively, the "IDOC Defendants") were employed at Pontiac in the following capacities: Defendant Melvin served as the Assistant Warden of Programs, and later as the Warden; Defendants Prentice and Hasdall were correctional majors; Defendant Boland was a correctional lieutenant; Defendant Gasper was a correctional sergeant; Defendant Kelley was a correctional counselor, and also served as the Assistant Warden of Programs from March through August 2016; Defendant Kennedy was a casework supervisor; and, Defendants DeVries, Myers, and Henkel were correctional officers.

Plaintiff was transferred to Pontiac from Lawrence Correctional Center ("Lawrence") for disciplinary reasons after he was found guilty of several rules violations over a period spanning approximately three months.[1] At the time of his transfer, Plaintiff was serving a term of segregation as punishment for two separate violations for disobeying a direct order. (Doc. 93-14

[1] Specifically, Plaintiff was found guilty at Lawrence of assaulting a staff member, intimidation, fighting, damage or misuse of property, impairment of surveillance, and, on seven (7) separate occasions, disobeying a direct order. (Doc. 93-14) at 3-4. Plaintiff's punishment for these violations included a disciplinary transfer, revocation of good-time credits, demotion in grade to C-grade, restitution, restrictions on contact visits, segregation, and yard restriction. *Id.*

at 4-5) (decisions dated March 23, 2013, and March 26, 2013). Plaintiff accrued additional segregation time thereafter for numerous offenses he committed at Pontiac.[2] *Id.* at 3-7 (segregation time totaling 51 months imposed for rules violations committed from March 2013 through August 2016). As a result, Plaintiff remained in segregation and the North Cell House at Pontiac from his arrival until August 2016, when he was transferred to the South Cell House.

Plaintiff was transferred cells approximately 40 times between June 2014 and August 2016. (Doc. 76-10 at 2-3). The frequency of these cell transfers made Plaintiff's stay in any given cell relatively short: on at least 25 occasions, Plaintiff's stay lasted less than 14 days; eight (8) stays lasted between 15-30 days; and, four (4) stays lasted between 30-60 days. The longest duration Plaintiff was housed in any cell lasted 150 days on one occasion. *Id.* Plaintiff was provided with a styrofoam cup "half-filled with green liquid" once per week, but he was not provided any other cleaning materials. Pl.'s Dep. 74:15-16.

Plaintiff testified that the cells had different types of doors (solid plexiglass or metal, plexiglass with perforated holes, or bars). Pl.'s Dep. 56:5-24. In the cells with solid doors, Plaintiff testified that poor airflow made the cells uncomfortably warm. Pl.'s Dep. 23:18-23 (temperatures reached 90-100 degrees in cell with solid door); 53:7-9 ("I am in a cell…behind a solid metal door, solid plexiglass. Temperatures are extremely hot.").

Plaintiff told officials about the heat on July 9, 2016, when he stated to Defendant Haag, "I'm dying in this bitch behind plexiglass with no fan." (Doc. 78-9 at 9); and, on July 10, 2016, Plaintiff told Defendant Duckworth that he was "depressed about…not getting a fan." (Doc. 78-10 at 1). On August 7, 2016, Plaintiff stated to Defendant Duckworth that "he bugged up

[2] These offenses include including assaulting a staff member, disobeying a direct order, insolence, providing false information, spitting on other inmates, possession of contraband, health and safety violations, and impairment of surveillance. (Doc. 93-14 at 3-7).

because it was so hot." (Doc. 78-10 at 4). On these three dates, Plaintiff's "property [was] limited due to potential for self-harm." (Doc. 78-9 at 10); (Doc. 78-10 at 2, 4). Fans were otherwise available for purchase through the commissary, but Plaintiff could not afford one. No policy existed at the prison that permitted officials to loan a fan to an indigent inmate. Melvin Aff. (Doc. 93-3).

Plaintiff, however, was not left to suffer; he conceded in his deposition that prison officials provided ice and operated fans at the ends of the gallery as a means to provide relief to inmates when temperatures rose. Pl.'s Dep. 90:16-91:11. Nor did Plaintiff's stay in those cells last an extended period of time: Plaintiff was transferred to a different cell seven (7) days after the July 2016 complaints, and one (1) day after the August 2016 complaints. (Doc. 78-10 at 2). The record does not disclose, nor does Plaintiff specify, any additional cells or timeframes in which temperature became an issue.

Plaintiff appears to have been primarily confined indoors. Per his disciplinary records, Plaintiff accrued yard restrictions for multiple infractions. At most, Plaintiff's yard privileges would have been restricted from April 2013 until July 2013; from January 2014 until October 2014; and, from December 2014 until January 2017.[3] The yard restriction limited Plaintiff's access to the outdoor recreation yard to a maximum of once per month. Pl.'s Dep. 47:24-48:3.

Plaintiff testified that he made requests to Defendants Myers, Henkel, and DeVries on separate occasions, respectively, to go to the recreation yard. *Id.* 47:1-52:19. Plaintiff does not remember the exact dates, but he testified that he made each of these requests at some point after

[3] The records do not indicate that a yard restriction was in place at the time Plaintiff was transferred. In April 2013, Plaintiff received three (3) months yard restriction and no additional yard restriction was imposed before expiration of that period. In January 2014, Plaintiff received six (6) months yard restriction. Plaintiff received another three (3) months yard restriction for a May 2014 rule violation. If the latter took effect after expiration of the original 6-month restriction, the yard restriction would have expired in October 2014. In December 2014, Plaintiff received four (4) months yard restriction, and if imposed consecutively, the yard restrictions Plaintiff accrued as discipline for multiple rules violations from December 2014 through February 2016 would have expired in January 2017.

December 2014. Plaintiff did not go to yard on those days. *Id.* Plaintiff also testified that Defendant Prentice denied him access to the yard an unspecified number of times because his cell was not in compliance with the applicable prison rules. Pl.'s Dep. 60:15-62:20. Plaintiff does not remember the dates of his interactions with Defendant Prentice.

Plaintiff testified that the conditions he endured while housed in segregation caused him to bang and kick at the cell door, scream, and smear feces on all available surfaces, including himself. Pl.'s Dep. 42:8-23. These behaviors, however, were not exclusive to Pontiac as Plaintiff had a history of these behaviors while confined at different prisons dating back to 2008. (Doc. 93-14 at 1-4). Plaintiff also attributed his actions at Pontiac to the depressive and bipolar disorders with which he had been diagnosed.

Plaintiff's mental health conditions predate his incarceration, and he had received inpatient psychiatric treatment on several occasions prior to his arrival at IDOC. Pl.'s Dep. 29:9-24. Plaintiff's mental health treatment team at Pontiac consisted of Defendants McCormick, Moss, Haag, Duckworth, and Lanterman, as well as several non-defendant psychiatrists and mental health professionals (collectively, the "Mental Health Defendants"), who monitored Plaintiff's condition through examinations and regular contact. From March 2013 through August 2016, Defendant McCormick met with Plaintiff on at least ten (10) occasions, not including several scheduled examinations that did not happen because of Plaintiff's refusal to attend, time constraints, operational delay within the prison, or prison lockdowns. Plaintiff otherwise met with Defendants Moss, Haag, Duckworth, and Lanterman on a regular basis, with the frequency of these visits changing as needed. Routine appointments were generally scheduled every four-to-six weeks.

Defendant McCormick and non-defendant psychiatrists prescribed Plaintiff several different medications to treat his mental health conditions over the relevant time period, including Thorazine, Vistaril, Risperdal, Cogentin, Depakote, Lamictal, Sertraline, Zoloft, and Lithium. Plaintiff reported positive results, or otherwise did not identify any issues, with most of these medications when he took them as prescribed. *See* (Doc. 78-6 at 1) (Plaintiff reported to Defendant Haag that he was taking medication and that "he is good."); (Doc. 78-7 at 6) (Plaintiff reported to Defendant Moss that the new medications were "working well."); (Doc. 78-8 at 5) ("No concerns voiced" to Defendant Lanterman); (Doc. 78-9 at 2) (Plaintiff stated "I'm all right" to Defendant Haag). If no issues were reported, the psychiatrists renewed the medications. *See* (Doc. 93-15 at 42) (Dr. Dempsey, a non-defendant, continued Depakote prescription); *id.* at 54, 61 (Dr. Dempsey continued Lamictal prescription in June and July 2014); (Doc. 93-16 at 3, 26) (Dr. Dempsey continued Lamictal prescription in March and September 2015); (Doc. 93-16 at 61) (Defendant McCormick renewed Lithium prescription in July 2016).

The medications were also adjusted when Plaintiff reported adverse side effects. *See* (Doc. 93-15 at 12, 39) (Plaintiff's Cogentin and Risperdal prescriptions modified in October 2013 and March 2014, respectively, after Plaintiff reported adverse side effects); (Doc. 78-8 at 1) (Plaintiff's Zoloft prescription modified in February 2016 for same reasons). But, ultimately, the decision to discontinue or change any given medication was largely predicated on Plaintiff's willingness to take it. *See* (Doc. 93-15 at 9, 21, 48) (Thorazine, Risperdal and Cogentin, and Depakote discontinued after Plaintiff refused it in August 2013, December 2013, and May 2014, respectively); (Doc. 93-16 at 51) (Zoloft discontinued in March 2016 after nurses reported Plaintiff was consistently refusing it). Once Plaintiff's noncompliance became a recurring issue, Plaintiff's mental health treatment team discussed the possibility of the forced administration of

these medications, but opined that Plaintiff was not a good candidate for that option. (Doc. 76-3 at 4).

Plaintiff was placed on crisis watch at least seven (7) times after he expressed a desire to hurt himself or others: once in 2013 and 2015, respectively; twice in 2016; and, four (4) times between January 2014 and May 2014. *See* (Doc. 93-15 at 4-6, 26-27, 34-36, 42, 45-49); (Doc. 93-16 at 30-33, 46); (Doc. 78-9 at 9). This classification resulted in Plaintiff's placement in a crisis cell with his access to property limited to a suicide smock and blanket because of the risk Plaintiff would try to hurt himself. Generally speaking, officials would check on Plaintiff every 10-15 minutes while Plaintiff was so classified, and mental health professionals and psychiatrists would monitor Plaintiff's status on a daily basis. As his condition improved, Plaintiff was permitted additional property and access to other services. Aside from the first instance in May 2013, Plaintiff's medications were adjusted shortly after each crisis watch.

Plaintiff was also examined approximately 50 times over the relevant time period for medical issues not related to his mental health conditions, mostly for relatively non-serious conditions (colds, athlete's foot, hemorrhoids). Plaintiff testified in his deposition that he sued Defendants Tilden and Ojelade for an alleged failure to treat heart palpitations, muscles cramps and atrophy, nosebleeds, headaches, skin infections, and respiratory problems Plaintiff attributes to his cell conditions. Pl.'s Dep. 24:13-26:8.

For skin conditions, Defendant Tilden examined Plaintiff for nodular acne in July 2014, for which he prescribed Keflex (an antibiotic) and lotion. (Doc. 78-2 at 8). Medical reports appear to indicate improvement in this condition three months later during an examination with a non-defendant medical provider. (Doc. 93-15 at 66). In April 2015, Defendant Ojelade diagnosed Plaintiff with chronic cystic acne. (Doc. 93-16 at 10). Defendant Ojelade prescribed

an oral antibiotic to prevent infection of a small wound Plaintiff had on his hand, apparently from excess scratching, and an antibiotic cream. (Doc. 76-2 at 2, ¶ 6). During an annual physical exam in January 2016, Defendant Ojelade noted that Plaintiff had no open lesions, polyps or muscle atrophy. *Id.* at 3, ¶ 8.

Upon a referral from Defendant McCormick, Defendant Ojelade examined Plaintiff in April 2016 for "acne with a dry wound that occurred from [Plaintiff] scratching a lesion." (Doc. 76-2 at 3). After Plaintiff reported that hydrocortisone cream had not worked in the past, Defendant Ojelade prescribed an oral antibiotic and a different type of medicated cream to reduce acne-causing bacteria. (Doc. 93-16 at 52). Defendant Ojelade scheduled a follow-up appointment in three months. The medical records disclose no further issues for this condition.

Plaintiff first complained of muscle cramps in his shoulder and back in May 2016. During the initial examination for this condition, a nurse prescribed an over-the-counter pain medication and advised Plaintiff to follow up as needed. (Doc. 93-16 at 54-55). Defendant Ojelade examined Plaintiff on June 2, 2016, for Plaintiff's complaints of occasionally shaky hands, and advised Plaintiff to increase regular exercise. *Id.* at 58. Plaintiff refused sick call for muscle cramps in July 2016. (Doc. 93-16 at 59-60).

Defendant Tilden examined Plaintiff in July 2016, and he opined that dehydration was causing Plaintiff's muscle spasms. (Doc. 93-16 at 63). Defendant Tilden prescribed Motrin and Robaxin. Defendant Tilden also advised Plaintiff to increase his hydration levels and return to sick call as needed. The medical records reveal no further complaints from Plaintiff for this issue.

ANALYSIS

To prevail on his claims that prison officials violated the Eighth Amendment, Plaintiff must show that (1) he suffered an objectively serious deprivation that resulted in the "denial of the minimal civilized measure of life's necessities," and (2) that prison officials acted with deliberate indifference in response to the situation. *Gray v. Hardy*, 826 F.3d 1000, 1005 (7th Cir. 2016) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)).

A prison official acts with deliberate indifference when "the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer*, 511 U.S. at 837. A prison official's subjective awareness of a risk "is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Id.* at 842.

Conditions-of-Confinement

Plaintiff was housed in segregation at Pontiac from May 2013 until August 2016. Prolonged confinement in segregation "may constitute a violation of the Eighth Amendment…depending on the duration and nature of the segregation and whether there were feasible alternatives to that commitment." *Isby v. Brown*, 856 F.3d 508, 521 (7th Cir. 2017). As an initial matter, Plaintiff's confinement in segregation was not the result of a single punishment, but rather the cumulative punishments Plaintiff received for numerous disciplinary infractions he committed while housed at Pontiac. Plaintiff cannot aggregate these punishments to argue that the duration of his confinement in segregation resulted in a single, long-term deprivation; instead, the Court must evaluate each punishment separately. *Pearson v. Ramos*, 237 F.3d 881,

886 (7th Cir. 2001) ("Every disciplinary sanction…must be treated separately, not cumulatively, for purposes of determining whether it is cruel and unusual.").

Plaintiff does not challenge the individual punishments imposed for the violations he committed, and nothing about these punishments suggests that they were excessive in relation to the infraction committed or imposed without penological justification. Accordingly, the Court finds that no reasonable juror could conclude that the duration of Plaintiff's confinement in segregation, or the lengths of time for which the yard restrictions were imposed, on their own, violate the Eighth Amendment.

That said, the Court must still evaluate Plaintiff's claims regarding the conditions he allegedly endured. Prison conditions may be uncomfortable and harsh without violating the Constitution. *Dixon v. Godinez,* 114 F.3d 640, 642 (7th Cir. 1997). Thus, "extreme deprivations are required to make out a conditions-of-confinement claim." *Henderson v. Sheahan,* 196 F.3d 849, 845 (7th Cir. 1999). "Some conditions of confinement may establish an Eighth Amendment violation 'in combination' when each would not do so along, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need…." *Wilson v. Seiter*, 501 U.S. 294, 304 (1991). Plaintiff asserts he was forced to endure excessive heat without a fan inside his cell, that he was exposed to unsanitary conditions without adequate cleaning supplies, and that he was denied access to the outdoor recreation yard for an extended period of time.

The excessive heat, according to Plaintiff, resulted from the lack of ventilation in the cell and officials' refusal to provide him with a fan free-of-charge. Plaintiff could not have experienced excessive heat in every cell as his testimony regarding the different construction of cell doors suggests that the level of airflow within the cells also varied. Plaintiff's documented

complaints are also limited to the summer months. Even assuming the temperatures reached 90-100 degrees as Plaintiff opined, prison officials provided Plaintiff with ice when the temperatures rose and operated fans at the ends of the galleries to alleviate the heat. Plaintiff's stay in the offending cell was short-lived and his access to property was restricted because he was on crisis watch for suicidal thoughts. Plaintiff does not otherwise identify any specific cell in which temperature became an issue.

The presence of feces inside a cell could be considered sufficiently serious, *see Vinning-El v. Long*, 482 F.3d 923, 923-25 (7th Cir. 2007) (feces smeared on walls is sufficiently serious deprivation), but, again, Plaintiff has not provided any evidence regarding the duration of time he was exposed to such conditions, or identified any specific prison official responsible for the alleged deprivation. Plaintiff was disciplined multiple times for offenses involving use of his own feces, but only one of those incidents involves the presence of human feces within Plaintiff's cell to the extent that the continued exposure could be considered sufficiently serious. *See* (Doc. 93-14 at 10) (Plaintiff smeared feces on his cell window); *compare id.* at 8 (Plaintiff pushed a tray of feces into another cell); *id.* at 11 (Plaintiff threw feces at another cell). This condition, however, could not have persisted for any significant length of time as Plaintiff was housed in a crisis cell with well-being checks conducted every ten (10) minutes. Plaintiff refused several orders to clean his cell once officials noticed it, and officials removed him from that cell shortly thereafter.

Finally, as to the yard restrictions, the denial of outdoor exercise for any duration may violate the Eighth Amendment if serious psychological or physical consequences result therefrom. *Pearson*, 237 F.3d at 886; *Gruenberg v. Schneiter*, 474 F. App'x. 459, 462-63 (7th Cir. 2012). The extent to which Plaintiff was permitted access to the outdoor recreational yard is

unclear. Plaintiff testified that even those inmates on yard restriction were permitted access to the yard once per month, but that he was denied access to same on several occasions for which he cannot provide dates more specific than "after December 2014." Plaintiff also testified that Defendant Prentice denied him access to the yard because he was not in compliance with prison rules at the time of his requests.

Plaintiff does not assert that he was wholly denied the opportunity to exercise. Plaintiff could still move around in his cell to a certain extent, and the outdoor recreational area was not that much bigger than his cell. Pl.'s Dep. 92:6-23. Prison officials were also entitled to attach conditions aimed at addressing legitimate penological concerns upon Plaintiff's access to the yard. If, as Plaintiff suggests, a prison rule required his cell to be orderly before he was granted access, prison officials do not violate the Constitution merely through its enforcement. *Rodriguez v. Briley*, 403 F.3d 952, 952-53 (7th Cir. 2005) ("[D]eliberate noncompliance with a valid rule does not convert the consequences that flow automatically from that noncompliance into punishment.").

Nonetheless, Plaintiff cannot show that he suffered adverse health consequences as a result of the denial of access to the yard. The medical records disclose that Plaintiff reported some improvement in his mental health conditions throughout the relevant timeframe. Defendant Ojelade opined that Plaintiff suffered from occasional shaky hands due to a lack of exercise, but nothing connects this condition with the denial of access to the outdoor recreational yard. Plaintiff's mental health and medical issues are discussed in further detail below.

Regardless of whether the deprivations Plaintiff alleges are evaluated individually or in combination, the Court finds that no reasonable juror could conclude on the record presented that Plaintiff suffered the type of extreme deprivation required to prevail on a conditions-of-

confinement claim. Moreover, no reasonable inference exists that prison officials acted with deliberate indifference towards any risk of harm Plaintiff faced.

Plaintiff's Mental Health and Medical Care

Inmates are entitled to adequate medical care under the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). To prevail, a plaintiff must show that the prison official acted with deliberate indifference to a serious medical need. *Id.* at 105. Plaintiff's access to mental health or medical treatment is not at issue, and neither party asserts that Plaintiff's conditions were not objectively serious.

In the medical context, treating physicians are entitled to deference. *Zaya v. Sood*, 836 F.3d 800, 805 (7th Cir. 2016). To constitute deliberate indifference, a treatment decision must be "such a substantial departure from accepted professional judgment, practice, or standards, as to demonstrate that the person responsible actually did not base the decision on such a judgment." *Petties v. Carter*, 836 F.3d 722, 729 (7th Cir. 2016) (en banc). In other words, a medical professional is deliberately indifferent only if "'no minimally competent professional would have so responded under those circumstances.'" *Sain v. Wood*, 512 F.3d 886, 894-95 (7th Cir. 2008) (quoting *Collignon v. Milwaukee Cnty.*, 163 F.3d 982, 988 (7th Cir. 1998)).

Circumstances that could permit such an inference include: persisting in a course of treatment known to be ineffective; failure to follow an existing protocol; inexplicable delays in treatment without penological justification; and, refusal to follow a specialist's recommendations. *Petties*, 836 F.3d at 729-30. Claims of negligence, medical malpractice, or disagreement with a prescribed course of treatment, however, are not sufficient to impose constitutional liability. *See id.*; *McDonald v. Hardy*, 821 F.3d 882, 888 (7th Cir. 2016).

Plaintiff argues that the Defendants should have recognized that the conditions he allegedly endured while at Pontiac caused the symptoms he presented, and that failure to alleviate these conditions through his release from segregative confinement, granting access to the recreational yard, and providing him with a fan violated the Constitution.

As to causation, Plaintiff's mental health issues arose prior to his incarceration at any prison, and his disciplinary records disclose behaviors similar to those he allegedly displayed while at Pontiac long before the relevant time period. Further, Plaintiff's behavior was not always related exclusively to his cell conditions or mental health issues. *See* Pl's Dep. 35:1-17 (the rules violations Plaintiff committed at Lawrence were motivated by a desire to force a transfer to another facility); (Doc. 93-14 at 13) (Plaintiff's mental health condition did not contribute to his actions in spitting on another inmate); (Doc. 78-9 at 1) (Plaintiff told Defendant Moss that "he returned to [segregation] because he lives off the gallery via trading and on 8 gallery people don't even talk to the [inmates]."); (Doc. 99-1 at 7) (Plaintiff falsely conveyed that he was suicidal in an effort to persuade mental health officials to "be more of an advocate to help with his legal cause and also issues with owing the state money."). The record does not otherwise permit a reasonable inference that the conditions in segregation at Pontiac caused or exacerbated Plaintiff's issues.

Even assuming Plaintiff could establish the connection he asserts, the actions the Defendants took in addressing Plaintiff's mental health and medical issues do not permit a reasonable inference that they ignored any substantial risk of harm Plaintiff faced, unreasonably delayed or persisted in a course of treatment known to be ineffective, or based their decisions on factors not related to the exercise of sound medical judgment.

The Mental Health Defendants continuously monitored Plaintiff's mental health condition throughout the relevant timeframe, and they adjusted Plaintiff's medications in response to any issues that arose. Plaintiff's treatment team also addressed Plaintiff's recurring noncompliance with the prescribed medications within the context of whether forced administration of those drugs was appropriate, though they ultimately declined to pursue that treatment option. Less than a month after this option was discussed, Plaintiff reported that his new medication was "working well." (Doc. 78-7 at 6, 8).

Plaintiff also has not offered any evidence to show that the Mental Health Defendants had any authority to order the relief Plaintiff sought. The record discloses that the Mental Health Defendants had authority over Plaintiff's cell placement and property only when Plaintiff was on crisis watch. As this designation encompassed situations where Plaintiff had indicated a desire to hurt himself, no reasonable juror could conclude that the decisions to confine Plaintiff in a cell with limited access to items that he could use to inflict self-harm ran contrary to acceptable medical judgment. To the extent that Plaintiff's desired remedy could be considered treatment, he had no constitutional right to demand it. *Snipes v. DeTella*, 95 F.3d 586, 592 (7th Cir. 1996). Nor, as noted above, does his disagreement with the treatment provided support a finding of deliberate indifference.

For the physical conditions Plaintiff identified during his deposition, Defendants Tilden and Ojelade only examined Plaintiff a handful of times. For the skin conditions, Plaintiff generally showed improvement after receiving treatment or otherwise did not report any significant issues thereafter. On the one occasion where Plaintiff reported that hydrocortisone cream did not work, Defendant Ojelade prescribed different medications. For the muscle cramps, Plaintiff received pain medication, and when his complaints continued, he was

prescribed a different type of pain medication with other medications. No further problems were reported. Any other treatment Plaintiff received for these conditions was not attributable to any Defendant in this case.

In addition, Plaintiff cannot prevail on any medical claims against the IDOC Defendants. Plaintiff's requests for medical treatment were not ignored and no reasonable inference arises that Plaintiff's access to treatment was obstructed in any way. In this scenario, the IDOC Defendants were entitled to defer to the decisions made by the medical professionals providing treatment to Plaintiff. *See, e.g., Berry v. Peterman*, 604 F.3d 435, 440 (7th Cir. 2010) (nonmedical prison officials "are entitled to defer to the judgment of jail health professionals" so long as the inmate's complaints are not ignored (citations omitted)).

Accordingly, the Court finds that no reasonable juror could conclude that the Defendants acted with deliberate indifference towards Plaintiff's serious mental health or medical needs. Because there is no underlying constitutional violation, Plaintiff's claims against Wexford also fail. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Pyles v. Fahim*, 771 F.3d 403, 412 (7th Cir. 2014).

IT IS THEREFORE ORDERED:

1) **Plaintiff's Motions [102][103][104][105][106][107] are DENIED for the reasons stated above.**

2) **Plaintiff's Motion [96] is GRANTED. Defendant Marano is dismissed with prejudice. Clerk is directed to terminate Defendant Marano.**

3) **Defendants' Motions for Summary Judgment [76][92] are GRANTED. The clerk of the court is directed to enter judgment in favor of Defendants and against Plaintiff. All pending motions not addressed above are denied as moot, and this case is terminated, with the parties to bear their own costs. Plaintiff remains responsible for the $350.00 filing fee.**

4) **If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion**

for leave to appeal in forma pauperis MUST identify the issues the Plaintiff will present on appeal to assist the court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *see also Celske v Edwards*, 164 F.3d 396, 398 (7th Cir. 1999)(an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a reasonable assessment of the issue of good faith."); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000)(providing that a good faith appeal is an appeal that "a reasonable person could suppose…has some merit" from a legal perspective). If Plaintiff does choose to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

Entered this 15th day of November, 2018.

s/Colin S. Bruce
COLIN S. BRUCE
UNITED STATES DISTRICT JUDGE

E-FILED
Friday, 16 November, 2018 02:28:32 PM
Clerk, U.S. District Court, ILCD

Judgment in a Civil Case (02/11)

UNITED STATES DISTRICT COURT

for the
Central District of Illinois

Michael Johnson	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case Number: 16-1244**
	)	
Susan Prentice, Andrea Moss, Kelly Haag, Linda Duckworth, Deidre Marano, Scott McCormick, Riliwan Ojelade, Stephen Lanternan, Andrew Tilden, Travis Devries, Eric Myers, Gerald Henkel, John Gasper, James Boland Warren Hadsell, Kimberly Kelly, Terri Kennedy, Michael Melvin, and Wexford Health Sources Inc.,	)	
	)	
	)	
Defendants.	)	

JUDGMENT IN A CIVIL CASE

☐ **JURY VERDICT**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **DECISION BY THE COURT**. This action came before the Court, and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the Plaintiff's action against the Defendants is dismissed with each party to bear their own costs.

Dated: 11/16/2018

s/ Shig Yasunaga
Shig Yasunaga
Clerk, U.S. District Court