**Case No: 21-5540**

In the

# United States Court of Appeals

For the Sixth Circuit

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**DANIEL LYNN WILLIAMS,**
*Plaintiff-Appellant*

v.

**HILTON HALL, JR., Warden; CASE MANAGER MALONE; SERGEANT MANN; UNIT MANAGER S. JONES; CORECIVIC**
*Defendants-Appellees*

On Appeal from the United States District Court – Western District of Tennessee
Case No. 1:20-cv-01171

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## BRIEF OF APPELLEE, HILTON HALL, JR., WARDEN

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## CORPORATE DISCLOSURE

Pursuant to Federal Rule of Appellate Procedure 26.1 and Sixth Circuit Rule 26.1, counsel for Appellee certifies that while Appellee is not a subsidiary or affiliate of a publicly owned corporation, CoreCivic, Inc., which is a publicly owned corporation, has a financial interest in the outcome of this appeal. CoreCivic, Inc. operates Hardeman County Correctional Facility, which is the location where the alleged events giving rise to this lawsuit occurred.

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## STATEMENT OF ISSUES

1. Did the District Court err in concluding that Appellant failed to state a claim upon which relief could be granted when Appellant did not allege facts to show that the individual defendants possessed knowledge of a substantial risk of serious harm?

2. Did the District Court err in concluding that Appellant failed to state a claim upon which relief could be granted when Appellant failed to allege that the individual defendants caused him any injury or harm?

3. Should this Court consider the ramifications of 42 U.S.C. § 1997e(e) when they ultimately have no bearing on whether the District Court erred?

## STATEMENT OF THE CASE

Appellant is a Tennessee Department of Correction ("TDOC") inmate who filed his Complaint on July 7, 2020. (Complaint, R. 1). Appellant sued Warden Hall, "Mr. Malone," "Mrs. Mann," and "Mr. Jones," each in their individual and official capacities. (*Id*., PageID # 2-3). He named no other defendants. (*Id*.).

In his Complaint, Appellant claimed that while incarcerated at Hardeman County Correctional Facility ("HCCF"), he "was recently raped and made to do sexual favors" by "gang members" accusing him of "causing them to lose [a] 1000 Touchscreen cell phone." (*Id*., PageID # 13). He claimed he "tried several times with J-B counselor" to "get her to help," but "she refused." (*Id*.). He claimed he was "sodomized" and "hit hard in the head" until he "gave in and gave gang members

oral sex." (*Id.*). Two days later, he was "able to get out of [his] living unit," and reached out to "mental health." (*Id.*). Mental health "helped" him, and he was placed in a "seg unit." (*Id.*). Within two days, "several guards…spread[] the news" about Appellant's rape. (*Id.*).

Eventually HCCF placed Appellant in protective custody. (*Id.*). After being placed in protective custody, Appellant claimed that he "had knives put to his throat," that he was "hit in the head," and that his commissary was taken from him. (*Id.*, PageID # 14). He claimed he wrote a letter to Hall three times requesting help "to be moved," but Hall "ignored" him. (*Id.*). Similarly, he claimed he wrote Mann, Malone, and Jones asking for "help to be moved." (*Id.*). Malone and Jones "ignored" him too. (*Id.*). Mann, on the other hand, responded to his letter by "cursing" at him and informing him that she would not help him move. (*Id.*).

Appellant further claimed that unidentified "guards don't do their jobs," that they "sleep[] in the control booth," and that they "let inmates in other inmates' cells." (*Id.*). Appellant claimed that he "cannot sleep," that he "shakes," is "paranoid," and "cr[ies]" due to "all this." (*Id.*, PageID 6 & 14). He claimed that he asked unidentified "guards and case manager" to call mental health, but that they refused to do so. (*Id.*). To conclude his Complaint, Appellant sought "compensation for emotional and physical abuse." (*Id.*, PageID # 6). Additionally, he demanded to be "sent to another prison." (*Id.*, PageID # 5).

When he filed his notice of appeal, Appellant no longer resided at HCCF. After filing his Compliant, Appellant was transferred from HCCF to Whiteville Correctional Facility ("WCF") in Whiteville, Tennessee. (Envelope, R. 10-2 (noting Appellant's address as "WCFA P.O. Box 679, Whiteville, TN")). Currently, Appellant resides at Turner Center Industrial Complex in Only, Tennessee.[1]

On March 26, 2021, the District Court entered an order dismissing Appellant's Complaint.[2] (Order, R. 7). The District Court found that Appellant failed to allege any facts to suggest the individual defendants "should have protected him from the rape and sexual assault." (*Id*., PageID # 12). Further, the District Court noted that Appellant's only allegations against Hall, Malone, and Jones were that they "failed to respond to his letters…" (*Id*., PageID # 11). The District Court additionally concluded that Appellant failed to allege that he suffered any injury *after* Defendants "failed to respond" to his letters. (*Id*., PageID # 13).

Similarly, the District Court held that Appellant failed to plead sufficient facts to support a denial of medical care claim against the defendants. (*Id*., PageID # 14). It recognized that Appellant "does not specifically allege who denied his requests

[1] A TDOC offender's location can be confirmed at https://apps.tn.gov/foil/.

[2] Appellant only appealed the portions of the District Court's Order dismissing his failure to protect and denial of access to medical care claims brought against the individual defendants. Appellant has not appealed the District Court's Order dismissing Appellant's official capacity claims, Appellant's retaliation claims, or Appellant's conditions of confinement claims.

for mental health services," noting that he only alleged that unidentified guards and a "case manager" denied his requests for medical care. (*Id*., PageID # 15).

Despite finding Appellant failed to state a claim in his Complaint, the District Court explicitly provided Appellant the opportunity to amend. (*Id*., PageID # 19). The District Court instructed Appellant, in part, that an amended complaint "must allege sufficient facts to support each claim….and must identify each Defendant…" (*Id*., PageID # 19-20). Appellant never filed an amended complaint, and the District Court dismissed the case on April 26, 2021. (Order, R. 8). In doing so, the District Court assessed a strike pursuant to 28 U.S.C. § 1915(g). (*Id*.).

## SUMMARY OF THE ARGUMENT

Appellant attempts to use this case as a vehicle to resolve unsettled "issues" related to 42 U.S.C. § 1997e(e). The Court need not delve into the issues surrounding 42 U.S.C. § 1997e(e), however. Based upon the facts pled by Appellant, he failed to state a claim against any of the named defendants regardless of the Court's interpretation of 42 U.S.C. § 1997e(e). Specifically, Appellant failed to allege any facts that could support a conclusion that the defendants acted with "deliberate indifference" towards Appellant's health or safety. Without such a requisite showing, Appellant failed to state an Eighth Amendment claim.

Moreover, Appellant unquestionably failed to allege that he suffered injury due to any action taken by the defendants. Per this Court's holding in *Wilson v.*

*Yaklich*, 148 F.3d 596 (6th Cir. 1998), such a failure barred his claim for monetary damages.

To the extent Appellant sought injunctive relief, he failed to allege that the named defendants possessed the authority to transfer him to another prison – the injunctive relief he sought. Without possessing such authority, entering injunctive relief against the defendants would not have been proper. Further, Appellant no longer resided at HCCF when he made this appeal. Thus, at minimum, his claims for injunctive relief are moot.

Finally, to the extent the Court entertains Appellant's 30-page diatribe of the District Court's single paragraph concerning 42 U.S.C. § 1997e(e), Appellant offers a narrow, improper interpretation that should be rejected.

## ARGUMENT

### I. STANDARD OF REVIEW.

This Court must review *de novo* a district court's order dismissing a complaint pursuant to 28 U.S.C. § 1915(e). *Grinter v. Knight*, 532 F.3d 567, 571-72 (6th Cir. 2008). Under 28 U.S.C. § 1915(e), a district court is required to "dismiss the case at any time if the court determines" that the action is "frivolous or malicious," or fails to state a claim on which relief may be granted. *Powell v. Woodard*, 2018 U.S. App. LEXIS 13239, at *5 (6th Cir. May 21, 2018) (citing 28 U.S.C. § 1915(e)(2)(B)(i), (ii)). Although a *pro se* litigant is entitled to a liberal construction

of his pleadings and filings, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Even a *pro se* pleading must provide the opposing party with notice of the relief sought, and it is not within the purview of the district court to conjure up claims never presented." *Frengler v. Gen. Motors*, 482 F. App'x 975, 977 (6th Cir. 2012).

To that extent, while the pleading standard of Rule 8 "does not require detailed factual allegations," it still "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft*, 556 U.S. at 678. "Threadbare recitals of all the elements of a cause of action, supported by mere conclusory statements do not suffice." *Id*. at 664. This standard demands that the factual allegations "raise a right to relief above the speculative level" and "nudge[] the[] claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570. Thus, a court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678.

Several considerations guide whether a complaint meets the facial-plausibility standard. On one hand, "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. Further, the factual allegations of

a pleading "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. On the other hand, a complaint will not "suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557).

## II. APPELLANT FAILED TO PLEAD SUFFICIENT FACTS TO STATE A CLAIM AGAINST THE INDIVIDUAL DEFENDANTS.

Section 1983 places liability on a "person who, under color of any statute, ordinance, regulation, custom or usage, of any States" subjects another to "the deprivation of any rights, privileges, or immunities secured by the Constitution or law." 42 U.S.C. § 1983. A successful section 1983 action establishes "(1) that there was the deprivation of a right secured by the Constitution and (2) that the deprivation was caused by a person acting under color of state law." *Wittstock v. Mark A. Van Sile, Inc.*, 330 F.3d 899, 902 (6th Cir. 2003).

To state a cognizable claim under section 1983 against an individual defendant, a plaintiff must show some direct, personal involvement by the defendant in the alleged constitutional deprivation. *See Knott v. Sullivan*, 418 F.3d 561, 574 (6th Cir. 2005). To establish personal liability under section 1983, it must be shown that the official acted to "cause[] the deprivation of a [federal] right." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985); *see also Iqbal*, 556 U.S. at 676 (explaining that, because there is no vicarious liability in section 1983 suits, a plaintiff must plead that each government defendant, "through the official's own individual actions, has

violated the Constitution.").

At bottom, "[p]ersons sued in their individual capacities under section 1983 can be held liable based only on their own unconstitutional behavior." *Heyerman v. Cnty. of Calhoun*, 680 F.3d 642, 647 (6th Cir. 2012) (citing *Murphy v. Grenier*, 406 F. App'x 972, 974 (6th Cir. 2011) ("Personal involvement is necessary to establish section 1983 liability."); *Gibson v. Matthews*, 926 F.2d 532, 535 (6th Cir. 1991) (noting that personal liability "must be based on the actions of that defendant in the situation that the defendant faced, and not based on any problems caused by the errors of others, either defendants or non-defendants.")). Thus, section 1983 liability must be based on more than *respondeat superior*, or the right to control employees. *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999). A supervisory official's failure to supervise, control or train the offending individual is not actionable unless the supervisor "either encouraged the specific incident of misconduct or in some other way directly participated in it. At a minimum, a plaintiff must show that the official at least implicitly authorized, approved, or knowingly acquiesced in the unconstitutional conduct of the offending officers." *Id*.

**A. Appellant did not plead facts sufficient to state a claim that the individual defendants failed to protect him in violation of his Eighth Amendment rights.**

The Eighth Amendment provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S.

Const. amend. VIII. Conditions of confinement that "involve the wanton and unnecessary infliction of pain" or that are "grossly disproportionate to the severity of the crime warranting imprisonment" constitute "cruel and unusual punishment." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Punishment may not be "barbarous" nor may it contravene society's "evolving standards of decency." *Id*. at 345-46; *Estelle v. Gamble*, 429 U.S. 97, 102-03 (1976) (citations omitted). Consistent with these principles, prison officials have a duty to "take reasonable measures to guarantee the safety of . . . inmates." *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)).

A viable Eighth Amendment claim has an objective and a subjective component. *Mingus v. Butler*, 591 F.3d 474, 479-80 (6th Cir. 2010). In order to establish a constitutional violation based in the failure to protect context, a prison inmate first must show that the failure to protect from risk of harm is objectively "sufficiently serious." *Farmer*, 511 U.S. at 833. Thus, a plaintiff must show that "he is incarcerated under conditions posing a substantial risk of serious harm." *Id*. Secondly, a plaintiff must establish the subjective element; namely, that prison officials acted with "deliberate indifference" to inmate safety. *Id*. at 834.

Importantly, "deliberate indifference" entails more than just mere negligence. *Cabaniss v. City of Riverside*, 231 Fed. App'x 407, 414 (6th Cir. 2007). An inmate must show that prison officials had "a sufficiently culpable state of mind" in

committing the acts which form the basis of the claim. *Brown v. Bargery*, 207 F.3d 863, 867 (6th Cir. 2000) (citing *Farmer*, 511 U.S. at 834). An official is deliberately indifferent if he or she "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of the facts from which the inference could be drawn that a substantial risk of harm exists, and he must also draw the inference." *Farmer*, 511 U.S. at 837. A prison official who was unaware of a substantial risk of harm to an inmate may not be held liable under the Eighth Amendment even if the risk was obvious and a reasonable prison official would have noticed it. *See id*. at 842-43.

Relevantly, the Supreme Court emphasizes, "Prisons are necessarily dangerous places; they house society's most antisocial and violent people in close proximity with one another." *Farmer*, 511 U.S. at 858-59. "Regrettably, 'some level of brutality and sexual aggression among [prisoners] is inevitable no matter what the guards do…unless all prisoners are locked in their cells 24 hours a day and sedated.'" *Id*. As a result, prison officials do not violate a prisoner's rights under the Eighth Amendment every time one prisoner inflicts injury on another. *See id*. at 834; *see also, Spear v. Sowders*, 71 F.3d 626, 630 (6th Cir. 1995) ("Prisons are dangerous and filled with law-breaking because that is where the criminals are. Even the most secure prisons are dangerous places for inmates, employees, and visitors.").

*i. Appellant failed to plead facts to conclude that Hall, Malone, or Jones acted with deliberate indifference towards Appellant's safety.*

Appellant claimed that after being placed in protective custody, he "had knives put to his throat," that he was "hit in the head," and that his commissary was taken from him. (Complaint, R. 1, PageID # 14). He claimed that afterwards, he wrote three letters to Hall requesting help "to be moved," but Hall "ignored" him. (*Id*.). He also generally asserted, without saying when or how, that he told Hall about an occasion when "inmates put[] [a] knife to my throat." (*Id*., PageID # 5). Similarly, he alleges that he wrote letters to Malone and Jones asking for "help to be moved." (*Id*.). Notwithstanding, Appellant did not allege (1) the nature of the content of the letters he sent to Hall, Malone and Jones, other than a general request "to be moved,"[3] (2) whether Hall, Malone, or Jones actually read the letters, or (3) whether he informed Hall, Malone, or Jones of an ongoing threat to his safety. Thus, Appellant's sole factual allegations against Hall, Malone, and Jones relating to his Eighth Amendment failure to protect claims were that he (1) sent each of them letters

[3] Within his brief, Appellant misrepresents the allegations he made concerning the letters he wrote the defendants. Specifically, Appellant asserts that he "wrote Warden Hall three times describing the risk he faces and the threats he'd received from other prisoners, and begged to be transferred." (Appellee's Brief, Doc 13, Page 67). Based upon this misrepresentation, Appellant argues that the individual defendants "knew – because he told them – of an intolerable risk to his personal safety." (*Id*.). Contrary to Appellant's argument in his brief, Appellant only alleged that he requested "help to be moved" in his letters – he did not allege that he "told them" of a risk to his safety. (Complaint, R. 1, PageID # 14).

requesting to be moved, (2) that each of them "ignored" his requests, and (3) that he told Hall about inmates previously placing a "knife to [his] throat."

The District Court correctly found that such allegations fell far short of showing that Hall, Malone, or Jones acted with deliberate indifference. Appellant asserted no facts to suggest that Hall, Malone, or Jones had actual knowledge of an ongoing substantial risk of serious harm when they refused to move him. He never asserted he told them why he desired to be moved. And he never alleged that they were aware that his safety was at risk when he made said request. Without those requisite allegations, Appellant failed to state an Eighth Amendment claim.

*ii. Appellant failed to plead facts to conclude that Mann acted with deliberate indifference towards Appellant's safety.*

Allegations of verbal harassment, threats, or verbal abuse, without more, do not rise to the level of cruel and unusual punishment prohibited by the Eighth Amendment. *Johnson v. Dellatifa*, 357 F.3d 539, 546 (6th Cir. 2004). In fact, harassment and verbal abuse, no matter how "shameful and utterly unprofessional," do not violate the Eighth Amendment. *Johnson*, 357 F.3d at 545-46. "Even the occasional and sporadic use of racial slurs, although unprofessional and reprehensible, does not rise to a level of constitutional magnitude." *Torres v. County of Oakland*, 758 F.2d 147, 152 (6th Cir. 1985).

Here, Appellant claims that he wrote a letter to Mann requesting "help to be moved." In response, Appellant claims that Mann "came in [his] living area and

cursed" and told him that she was "not helping" him. (Complaint, R. 1, PageID 14). Again, Appellant failed to allege the nature of the content of the letter, other than a general request "to be moved." Likewise, he failed to allege that during his encounter with Mann that he informed her or that she otherwise learned of a substantial risk of serious harm to Appellant's safety. Thus, Appellant asserted no facts to show that Mann possessed actual knowledge that a substantial risk of serious harm to Appellant existed. As a result, he failed to plead sufficient facts to show that Mann acted with "deliberate indifference," and thus, failed to state an Eighth Amendment claim.

**B. Appellant failed to plead facts to state a claim that the individual defendants failed to provide him access to medical care.**

In the medical care context, in order to show "unnecessary and wanton infliction of pain" necessary to state an Eighth Amendment violation, a plaintiff must likewise show that the defendants acted with "deliberate indifference" towards the plaintiff's serious medical needs. *Estelle*, 429 U.S. at 106. An inmate must show that the prison officials had "a sufficiently culpable state of mind in denying medical care." *Brown*, 207 F.3d at 867 (citing *Farmer*, 511 U.S. at 834). Such a standard can only be satisfied if "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." *Id*. In other words, "A defendant must purposefully ignore or fail to

respond to a prisoner's pain or possible medical need in order for deliberate indifference to be established." *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992). "Knowledge of the asserted serious needs or of circumstances clearly indicating the existence of such needs, is essential to a finding of deliberate indifference." *Horn ex rel. Parks v. Madison Cnty. Fiscal Court*, 22 F.3d 653, 660 (6th Cir. 1994).

In his Complaint, Appellant made no allegations that any of the individual defendants denied him access to medical care. Appellant alleged, "I suffer from mental health issues they tell me mental health don't want to see me which is (sic) lie." (Complaint, R. No. 1, PageID # 5). Additionally, he alleged that he asked "for guards and case manager (sic) call mental health so [he] could talk to them – they tell me know (sic) they not going to call mental health." (*Id*., PageID # 14). As noted by the District Court, "Williams does not specifically allege who denied his requests for mental health services….Therefore, he has not sufficiently alleged that any of the named defendants were deliberately indifferent to his serious medical needs…" (Order, R. No. 7, PageID # 15).

Appellant's lone argument concerning whether he sufficiently stated a failure to provide medical care claim is that by referencing "case manager" in his Complaint, he referred to Malone. While such a conclusion is *possible*, it is just as possible that "case manager" referred to someone else. Obviously, a prison does not

employ only one "case manager," just as it does not employ only one "officer." Accordingly, the District Court correctly concluded that such a reference was insufficient to identify a specific defendant.

Moreover, even if referring to "case manager" did sufficiently identify Malone, Appellant still failed to assert sufficient facts to show that Malone purposefully ignored or failed to respond to Appellant's possible medical need. Appellant *did not* assert any facts to show that the "case manager" in question *knew* that he was suffering from mental health issues. Instead, he only asserted that he requested that the "case manager" call mental health and that the "case manager" refused to do so. Such an allegation does not allege that the "case manager" had been "alerted to" Appellant's serious medical needs prior to refusing to "call mental health," and thus, falls short of alleging that the "case manager" acted with deliberate indifference.

**C. Appellant's identification of the "J-B counselor" is insufficient to state a claim.**

Appellant argues that he named an unidentified "J-B unit counselor" as a defendant. As an initial matter, Appellant's argument flies in the face of his own Complaint. Notably, Appellant utilized a form complaint to initiate his lawsuit. Within the form, it provided a specific section to identify the defendants. (Complaint, R. 1, PageID # 2-3). Nonetheless, Appellant did not identify a "J-B unit counselor" as a defendant. (*Id.*).

Moreover, even assuming Appellant intended to name a "J-B unit counselor" as a defendant, such an identification provides no justification to allow Appellant's case to proceed. First, a vague reference to a "J-B counselor" is insufficient to accomplish service of process on whomever Appellant meant to name as a defendant. Second, the Sixth Circuit has long held that filing a complaint against unnamed defendants does not toll the running of the statute of limitations against those parties. *See Cox v. Treadway*, 75 F.3d 230, 240 (6th Cir.), cert. denied, 519 U.S. 821 (1996); *Bufalino v. Mich. Bell Tel. Co*., 404 F.2d 1023, 1028 (6th Cir. 1968), cert. denied, 394 U.S. 987 (1969). While Fed. R. Civ. P. 15, permits an amended pleading to relate back to the date of the original complaint for statute of limitations purposes, the so-called relation back doctrine "requires that the newly added party receive sufficient notice of the action and that the delay in the addition of the new party be the result of a 'mistake concerning the party's identity.'" *Moore v. Tennessee*, 267 F. App'x 450, 455 (6th Cir. 2008) (quoting Fed. R. Civ. P. 15(c)). "[A] plaintiff's lack of knowledge pertaining to an intended defendant's identity does not constitute a 'mistake concerning the party's identity' within the meaning of Rule 15(c))." *Id*. (quoting Fed. R. Civ. P. 15(c)). The Sixth Circuit has further held that Rule 15 "allows relation back for the mistaken identification of defendants, not for defendants to be named later through 'John Doe,' 'Unknown Defendants' or other missing appellations." *Smith v. City of Akron*, 476 Fed. App'x 67, 69 (6th Cir.

2012). Accordingly, allowing Appellant to proceed against an unidentified "J-B counselor" would have been at best, an act in fruition. If he could ever have been identified, any claims against the "J-B counselor" would have been barred by the applicable statute of limitations.[4]

**D. Appellant failed to allege "cruel and unusual punishment" in the failure to protect context because he failed to allege that the defendants caused him injury.**

The Sixth Circuit has consistently required more than a *de minimis* injury be suffered in order to satisfy the objective component of an Eighth Amendment failure to protect claim. *See Flanory v. Bonn*, 604 F.3d 249, 254 (6th Cir. 2010) (citing *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) (stating that the Eighth Amendment is implicated by the "unnecessary and wanton infliction of pain."); *see also*, *Talal v. White*, 403 F.3d 423, 426 (6th Cir. 2005) (requiring that the prisoner demonstrate more than "mere discomfort or inconvenience.").

In an effort to skirt this requirement, Appellant points to the Supreme Court's decision in *Wilkins v. Gaddy*, 559 U.S. 34, 35 (2010). (Appellee's Brief, Doc 13, pg. 24). In *Wilkins*, the plaintiff brought an *excessive force claim*, alleging that "[Officer]

[4] It is well established that under Tennessee law, the statute of limitations applicable to all 42 U.S.C. § 1983 actions is the same as the statute of limitations for personal injury, one year. Tenn. Code Ann. § 28-3-104(a)(3); *see also Wolfe v. Perry*, 412 F.3d 707, 713-14 (6th Cir. 2005) (Because there is no applicable "statute of limitations governing § 1983 actions, federal courts must borrow the statute of limitations governing personal injury actions in the state in which the section 1983 action was brought.").

Gaddy, apparently angered by Wilkins' request for a grievance form, 'snatched [Wilkins] off the ground and slammed him onto the concrete floor.' Gaddy 'then proceeded to punch, kick, knee and choke [Wilkins] until another officer had to physically remove him from [Wilkins].'" *Id*. at 35 (citations omitted). As a result of these allegations, the plaintiff alleged he suffered "a bruised heel, lower back pain, increased blood pressure as well as migraine headaches and dizziness." *Id*.

The district court dismissed the plaintiff's complaint because the plaintiff did not allege more than *de minimis* injuries. *Id*. The Fourth Circuit summarily affirmed. *Id*. at 36. The Supreme Court reversed, however, holding that a "significant injury" was not relevant to whether a plaintiff states an Eighth Amendment claim *for excessive force*. *Id*. at 37-40 (emphasis added). According to the Court, "[i]njury and force . . . are only imperfectly correlated, and it is the latter that ultimately counts." *Id*. at 38. Ultimately, the Court reasoned '"[w]hen prison officials maliciously and sadistically use force to cause harm,' . . . 'contemporary standards of decency always are violated . . . whether or not significant injury is evident.'" *Id*. at 37 (citations omitted).

The reasoning of *Wilkins* does not extend beyond the excessive force context. The very basis for the Court's reasoning was that an officers' malicious and sadistic use of force could violate "contemporary standards of decency" – and thus, constitute cruel and unusual punishment – no matter the resulting injury. *Id*. at 37-

38. In a failure to protect context, on the other hand, a plaintiff must allege more than a *de minimis* injury to establish the objective component of an Eighth Amendment claim.[5] *See Schoelch v. Mitchell*, 625 F.3d 1041, 1047 (8th Cir. 2010) ("The objective standard that must be satisfied in a conditions-of-confinement claim differs from that applicable in the excessive force context, where the malicious and sadistic use of force by prison officials always violates 'contemporary standards of decency.'"). Furthermore, it is notable that post-*Wilkins* decisions from district courts across this circuit continue to affirm that a more than *de minimis* physical injury is required to prove an Eighth Amendment failure to protect claim. *See Mitchell v. Washington*, 2019 U.S. Dist. LEXIS 76493, at *7 (E.D. Mich. May 7, 2019) ("To state a failure-to-protect claim, a plaintiff must allege physical injury."); *Seabrooks v. Core Civic*, 2019 U.S. Dist. LEXIS 34000, at *12-13 (M.D. Tenn. Mar. 4, 2019) ("The holding in *Wilson* requires dismissal of Plaintiff's Eighth Amendment failure to protect claim given Plaintiff's lack of allegations that he suffered an actual physical injury caused by Defendants' alleged deliberate indifference to his safety."); *Hairston v. Maria*, 2018 U.S. Dist. LEXIS 213586, at *22 (S.D. Ohio Dec. 19, 2018) ("Because Plaintiff has not alleged that he suffered any physical injury as a result of Defendants' alleged failure to protect him, he has

[5] *Hudson v. McMillian*, 503 U.S. 1, 27 (1992) (Thomas, J., dissenting) (noting that the objective component injury requirement "remains applicable to all other prison deprivations" outside of an excessive force claim).

failed to state a claim upon which relief may be granted."); *Raybon-Tate v. Derrick Schofield*, 2018 U.S. Dist. LEXIS 27839, at *21 (M.D. Tenn. Feb. 21, 2018) ("Once such an assault has occurred, however, and the plaintiff seeks to obtain monetary damages arising from a past failure to protect, a showing of more than a *de minimis* injury is required."); *Dickey v. Rapier*, 2017 U.S. Dist. LEXIS 60118, at *11 (W.D. Ky. Apr. 19, 2017) ("Plaintiff fails to state an Eighth Amendment claim because he does not allege that he suffered some non-*de minimis* physical injury from Defendant Burkhead's failure to protect him."); *Carr v. Louisville Metro Dep't of Corr. Staff*, 2017 U.S. Dist. LEXIS 23596 at *5-6 (W.D. Ky. Feb. 20, 2017) ("Plaintiff has failed to state a claim upon which relief may be granted because he has not alleged that he suffered more than *de minimis* injuries."). Here, Appellant made no allegations that he suffered any physical injury as a result of the defendants' actions. It was *after* the rape that he allegedly sent the defendants letters requesting to be "moved," and Appellant asserted no suggestion that he suffered physical injury at any point in time after he submitted letters to the defendants.

Notwithstanding, Appellant argues that his allegation that he was "hit in the head" equated to a "physical injury." But that is not so. An undefined and undescribed "hit" is not an injury, and Appellant failed to allege that the "hit in the head" caused him injury. Not only that, he did not assert *when* the "hit in the head" occurred. Thus, it is not even clear whether the "hit in the head" happened prior to

or after he submitted letters to the defendants. Without alleging an injury *caused* by the defendants, Appellant failed to state an Eighth Amendment failure to protect claim.

## III. APPELLANT'S CLAIMS FOR MONETARY DAMAGES WERE APPROPRIATELY DISMISSED BECAUSE HE FAILED TO ALLEGE FACTS SUFFICIENT TO SHOW THAT THE DEFENDANTS CAUSED HIM INJURY.

Appellant failed to allege facts sufficient to show that he was entitled to monetary damages because he failed to show that the defendants caused him any physical harm. The law has long been that "a violation of a federally secured right is remediable in damages only upon proof that the violation proximately caused injury." *Horn by Parks v. Madison Cnty. Fiscal Court*, 22 F.3d 653, 659 (6th Cir. 1994); *see also Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 305-08 (1986). Further, the Supreme Court has read section 1983 "in harmony with general principles of tort immunities and defenses rather than in derogation of them." *Imbler v. Pachtman*, 424 U.S. 409, 418 (1976). This means that traditional legal principles such as but-for proximate causation apply to section 1983 claims when a plaintiff alleges that the defendant caused them to be harmed (rather than direct harm inflicted by the defendant). *Powers v. Hamilton Cty. Pub. Def. Comm'n*, 501 F.3d 592, 608 (6th Cir. 2007). In other words, "The basic purpose of § 1983 is 'to compensate persons for injuries that are caused by the deprivation of constitutional rights.'" *Memphis Community Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986) (emphasis

added) (quoting *Carey v. Piphus*, 435 U.S. 247, 254 (1978)) (holding that a student could recover compensatory damages only if he proved actual injury *caused by* the denial of his constitutional rights)). Thus, "proximate causation is an essential element of a § 1983 claim for damages." *Horn v. Madison County Fiscal Court*, 22 F.3d 653, 659 (6th Cir.), cert. denied, 130 L. Ed. 2d 130, 115 S. Ct. 199 (1994).

In light of said principles, the Sixth Circuit examines an Eighth Amendment claim for "psychological harm" due to fear of harm differently from a claim for physical injuries caused by an alleged failure to protect from harm. *Wilson v. Yaklich,* 148 F.3d at 601. In *Wilson*, this Court more specifically explained that an alleged failure to prevent harm is totally distinct from an alleged failure to prevent *the exposure* to risk of harm. *Id*. There, the plaintiff claimed that the defendants failed to protect him "from possible physical harm." *Id*. at 600. Specifically, the plaintiff asserted that he received threats from a prison gang and that prison officials failed to take action to protect him. *Id*. However, he made no allegation that he actually suffered any physical harm because of the defendants' alleged failure to protect him. *Id*. The *Wilson* Court concluded that because the plaintiff failed to allege that the defendants caused him any harm due to their alleged failure to protect him, he could not seek monetary damages. *Id*. at 601. Further, the Court held that a claim alleging non-physical injuries due to the exposure to the risk of harm is more

appropriately analyzed as an Eighth Amendment violation under a "conditions-of-confinement" theory, not a "failure to protect" theory. *Id*. The Court explained:

> Even if [the plaintiff] had claimed a non-physical injury such as fear of assault at the hands of the prison gang…monetary damages for such alleged harm would not have been appropriate in *this* Eighth Amendment context. The Supreme Court itself has noted that "*extreme* deprivations are required to make out a conditions-of-confinement claim," *Hudson v. McMillian*, 503 U.S. 1, 9, 117 L. Ed. 2d 156, 112 S. Ct. 995 (1992) (emphasis added), as opposed to an excessive force claim. No such egregious failures on the part of prison officials have been established here.

*Id.* In reaching its conclusion, the Court quoted the Seventh Circuit's decision in *Babcock v. White*, 102 F.3d 267, 272 (7th Cir. 1996) and further reasoned:

> However legitimate [the plaintiff's] fears may have been, we nevertheless believe that it is the reasonably preventable assault itself, rather than any fear of assault, that gives rise to a compensable claim under the Eighth Amendment. [A] claim of psychological injury does not reflect the deprivation of "the minimal civilized measures of life's necessities," *Wilson v. Seiter*, 501 U.S. 294, 298, 115 L. Ed. 2d 271, 111 S. Ct. 2321 . . . (1991); *Rhodes v. Chapman*, 452 U.S. 337, 347, 69 L. Ed. 2d 59, 101 S. Ct. 2392 . . . (1981), that is the touchstone of a conditions-of-confinement case. Simply put, [the plaintiff] alleges, not a "failure to prevent harm," *Farmer*, 511 U.S. [834] . . ., but a failure to prevent exposure to risk of harm. This does not entitle [the plaintiff] to monetary compensation. *See Carey*, 435 U.S. 247, 258-59, 55 L. Ed. 2d 252, 98 S. Ct. 1042 ("In order to further the purpose of § 1983, the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question -- just as the common-law rules of damages themselves were defined by the interests protected in the various branches of tort law.").

*Id.* (quoting *Babcock*, 102 F.3d at 272). Finally, the Court concluded:

> Clearly, *injunctive* relief may be ordered by the courts when necessary to remedy prison conditions fostering unconstitutional threats of harm to inmates. Wilson's complaint, however, cannot be read to allege an ongoing constitutional violation by these defendants because Wilson is no longer incarcerated at Mansfield Correctional Institution, where the events that form the basis for his allegations in this case took place. Consequently, any claim for *injunctive* relief against the defendants in their official capacities is also unavailing.

*Id*. (emphasis added).

Pursuant to *Wilson*, a claim of "psychological injury" does not reflect the deprivation of the minimal civilized measures of life's necessities that is the touchstone of a conditions of confinement case. *Id.* Only "extreme deprivations…. make out a conditions-of-confinement claim . . . [b]ecause routine discomfort is part of the penalty that criminal offenders pay for their offenses against society." *Hudson,* 503 U.S. at 9. Accordingly, an allegation that an inmate is in "fear" of harm falls short of stating a conditions-of-confinement claim under the Eighth Amendment.

Here, as discussed above, Appellant made no allegations that he suffered any physical injury as a result of the defendants' actions. On the other hand, Appellant did allege suffering ongoing "psychological harm." For example, he claimed that he "cannot sleep," that he "shakes," is "paranoid," and "cr[ies]" due to "all this." (R. 1, PageID 6 &14). But pursuant to *Wilson*, such allegations are insufficient to show an Eighth Amendment violation because they do not give rise to the "extreme deprivations" necessary to state a claim. *Wilson*, 148 F.3d at 601. And to the extent Appellant sought to "remedy prison conditions fostering unconstitutional threats of

harm," he would not be entitled to *monetary* damages from the defendants. Instead, his only remedy would be injunctive relief. *Id*. Accordingly, based upon the facts alleged, the District Court correctly dismissed Appellant's claims for monetary damages.

## IV. APPELLANT'S REQUESTS FOR INJUNCTIVE RELIEF WERE APPROPRIATELY DISMISSED.

Not only was Appellant not entitled to monetary damages, he was not entitled to injunctive relief. As noted in *Wilson*, "injunctive relief may be ordered by the courts when necessary to remedy prison conditions fostering unconstitutional threats of harm." *Wilson*, 148 F.3d at 601. Nonetheless, when a plaintiff fails to plead any valid cause of action, he possesses no valid basis upon which to seek injunctive relief. *See Saha v. Ohio State Univ.*, 259 Fed. App'x. 779 780 (6th Cir. 2008) ("Even had Saha properly pled a claim for injunctive relief, it is unavailable when the underlying claims are properly dismissed."). It bears repeating that a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety. *Farmer*, 511 U.S. at 834. 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. *Garretson v. City of Madison Heights*, 407 F.3d 789, 796 (6th Cir. 2005). Here, Appellant failed to plead that any of the individual defendants "knew of, but disregarded an excessive

risk of harm" to Appellant. Nowhere in his Complaint did Appellant assert facts that would show that any of the named individual defendants knew that Appellant was at risk of harm and then disregarded that risk. Without such allegations, Appellant cannot state a claim against them and thus, cannot obtain injunctive relief against them.

Moreover, Appellant's request for injunctive relief was that he be moved to a different prison facility are now moot – and have been for over a full year. After filing his Complaint and before filing his appeal, Appellant was transferred from HCCF to WCF. (Envelope, R. 10-2 (noting Appellant's address as "WCFA P.O. Box 679, Whiteville, TN")). Now, he resides in Turney Center Industrial Complex in Only, Tennessee. When an inmate files suit against prison officials at the institution of his incarceration based upon those officials' wrongful conduct seeking injunctive and declaratory relief, and that inmate is subsequently transferred or released, courts routinely dismiss the injunctive and declaratory relief claims as moot. *Sossamon v. Texas*, 563 U.S. 277, 304 (2011) (citations omitted) ("A number of…suits seeking injunctive relief have been dismissed as moot because the plaintiff was transferred from the institution where the alleged violation took place prior to adjudication on the merits."); *see also, e.g., Kensu v. Haigh*, 87 F.3d 172, 175 (6th Cir. 1996) (concluding that inmate's claims for declaratory and injunctive relief were rendered moot upon inmate's transfer from the prison

about which he complained); *Abdur-Rahman v. Michigan Dep't of Corr*., 65 F.3d 489, 491 (6th Cir. 1995) (finding an inmate's request for injunctive relief mooted upon transfer from relevant prison); *Lavado v. Keohane*, 992 F.2d 601 (6th Cir. 1993) (same). This is because an inmate's transfer or release ends the alleged violations of his constitutional rights, which "render[s] the court unable to grant the requested relief." *Berger v. Cuyahoga Cty. Bar Ass'n*, 983 F.2d 718, 724 (6th Cir. 1993). Accordingly, because Appellant is no longer incarcerated at HCCF, even had he set forth a claim that would support a request for injunctive relief, his request for injunctive relief is moot.

Finally, Appellant failed to even allege that the named defendants possessed the authority to transfer him to another prison. Indeed, as a TDOC inmate, it is the TDOC (who was never made a party) who possesses authority to transfer TDOC inmates, not the defendants. Accordingly, Appellant failed to name a proper party to obtain the injunctive relief he sought in his Complaint, and the District Court's dismissal of Appellant's claims for injunctive relief should be affirmed.

## V. THE DISTRICT COURT'S INTERPRETATION OF 42 U.S.C. § 1997e DOES NOT ALTER THE CONCLUSION THAT APPELLANT FAILED TO SET FORTH A CLAIM AGAINST THE DEFENDANTS.

Throughout his brief, Appellant focuses not on whether Appellant alleged the basic elements to state a constitutional claim, but on a lone paragraph in the District Court's order concerning 42 U.S.C. § 1997e(e). (*See* Order, R. 7, PageID 13). The

Court need not delve into the cobweb of issues Appellant attempts to create. They have no bearing on whether the District Court's ultimately made the right decision. Notwithstanding, in light of Appellant's obsession with 42 U.S.C. § 1997e(e), Appellee will briefly address the same.

In addition to the legal requirement of an "injury" in case law historically, Congress acted to further limit prisoner suits to only a specific kind of injury. Under § 1997e(e), lawsuits brought by institutionalized persons require a "physical" injury or "the commission of a sexual act" in order to permit recovery:

> **(e) Limitation on recovery.** No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury or the commission of a sexual act (as defined in section 2246 of title 18, United States Code).

42 U.S.C. § 1997e(e). Congress did not mince words. In order for a prisoner to bring a Federal civil action "for mental or emotional injury," he must show that he suffered a "physical injury" or was subjected to a "sexual act." *Id.*; *see also, Richmond v. Settles*, 450 Fed. App'x. 448, 453 (6th Cir. 2011) ("42 U.S.C. § 1997e(e) requires that a prisoner demonstrate actual physical injury to recover for violations of his Eighth Amendment rights"); *Grissom v. Davis,* 55 F. App'x 756, 757 (6th Cir. 2003) ("Section 1997e(e) prohibits prisoners from bringing a suit for mental or emotional injury without an accompanying physical injury."); *Bartleson v. Parker*, 2021 U.S. App. LEXIS 14957, at *6 (6th Cir. May 19, 2021) ("We have repeatedly applied §

1997e(e) to bar Eighth Amendment claims for mental or emotional harm in the absence of physical injury.").

Here, Appellant alleges he suffered a "sexual act" at the hands of other inmates *prior to* Appellant making any request to be "moved" from the individual defendants. He seeks "compensation for emotional and physical abuse" that he allegedly suffered *after* the rape in question – but he fails to allege that Defendants caused the alleged rape, nor does he allege that they caused the "emotional and physical abuse" in question that he suffered after the rape. (Complaint, R. 1, PageID #6). Thus, Appellant's discussion of whether the underlying sexual act could serve as the requisite "prior showing" when it was not caused by the alleged unconstitutional conduct is irrelevant. Appellant failed to allege the defendants caused *any harm*.

Notwithstanding, despite Appellant's argument to the contrary, common-sense dictates that some causation between the constitutional violation and the purported physical injury must exist in order for a plaintiff to satisfy 42 U.S.C. § 1997e(e). As previously noted, "a violation of a federally secured right is remediable in damages only upon proof that the violation proximately caused injury." *Horn by Parks v. Madison Cnty. Fiscal Court*, 22 F.3d 653, 659 (6th Cir. 1994); *see also Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 305-08 (1986). Taking Appellant's argument to its logical conclusion would mean that the requisite "prior

showing" of physical injury or a "sexual act" need not in any way be related to the underlying claim. As long as the plaintiff inmate can show he suffered some physical injury at the hands of someone at some point in time, he could bring a claim under 1997e(e). Such a result would make § 1997e(e) almost pointless.

Moreover, Appellant's reliance on *King v. Zamiara*, 788 F.3d 207, 209-10 (6th Cir. 2015) to assert that § 1997e(e) should not apply to compensatory damages for Eighth Amendment constitutional injuries is misplaced. *King* concerned claims brought under the First Amendment, where injury is not required to show a constitutional violation, and *King* has not been extended to Eighth Amendment claims – nor should it be. As noted above, to show cruel and unusual punishment under the Eighth Amendment in a failure to protect context, an inmate must allege something more than a *de minimis* injury. *See Bartleson v. Parker*, 2021 U.S. App. LEXIS 14957 at *5-6 (6th Cir. May 19, 2021) ("*King* "involved only alleged injuries for First Amendment violations.") Without an *injury*, a plaintiff cannot show constitutional injury in a failure to protect context. Thus, *King*'s reasoning, while applicable to considering § 1997e(e)'s application in a First Amendment context, has no bearing on Appellant's claims in this case.

## CONCLUSION

The District Court correctly concluded that Appellant failed to state a claim against the defendants. By neglecting to plead any facts to show that the defendants

possessed knowledge of a substantial risk of harm to Appellant's health or safety, Appellant failed to state an Eighth Amendment claim.

Additionally, Appellant did not allege the defendants caused him physical injury. Without such an allegation, he could not obtain monetary damages pursuant to this Court's decision in *Wilson v. Yaklich*, 148 F.3d 596 (6th Cir. 1998).

Likewise, Appellant could not obtain injunctive relief. Because Appellant moved from HCCF to another prison facility, his claims for injunctive relief automatically became moot, and because he failed to name the TDOC – the party who could actually provide the relief requested – he could not obtain his desired relief against the defendants.

Lastly, the Court need not explore the multitude of issues surrounding 42 U.S.C. § 1997e(e). But even if it does so, it should reject Appellant's narrow interpretation and improper reliance on other court decisions that have no bearing on the issues present in this case.

This Court should affirm the District Court's dismissal.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH RULE 32**

Pursuant to Rule 32 of the FEDERAL RULES OF APPELLATE PROCEDURE, the undersigned hereby certifies that:

1. This document complies with the type-volume requirement of Rule 32(a)(7)(B) in that it contains 7,920 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and

2. 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 proportionally spaced typeface using Microsoft Word in Times New Roman font in fourteen (14) point.

By: s/Nathan D. Tilly

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served via ECF filing system and/or via electronic mail, upon all parties via their counsel of record.

DATE: This the 11th day of March, 2022.

By: s/Nathan D. Tilly

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DAVID WILLIAMS,

Plaintiff-Appellant No. 21-5540

v.

HILTON HALL, JR., ET AL.,

Defendants-Appellees

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**APPELLEE'S ADDENDUM**

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Pursuant to Sixth Circuit Rule 28, Appellee hereby designates the following relevant District Court documents:

**DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS**
**DESIGNATION OF CONTENTS**

| **Description of Entry** | **Date** | **Record Entry #** | **PageID #** |
|---|---|---|---|
| Complaint | 7/07/20 | 1 | 1-26 |
| Order Dismissing Complaint | 3/26/21 | 7 | 5-20 |
| Order Dismissing Case | 4/26/21 | 8 | 21-22 |
| Appellant's Envelope | 6/01/21 | 10-2 | 26-27 |