

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 02, 2021**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SLOAN PATRICK STANLEY,

Plaintiff,

v.

JEFFREY UTTECHT and CASSIDY  
BLOUNT,

Defendants.

No. 4:20-cv-05152-SMJ

**ORDER DISMISSING ACTION**

**1915(g)**

Before the Court is Plaintiff Sloan Patrick Stanley's Second Amended Complaint, ECF No. 27. Plaintiff, currently housed at the Coyote Ridge Corrections Center ("CRCC"), is proceeding *pro se* and *in forma pauperis* before this Court. ECF No. 7. Defendants have not been served.

On November 6, 2020, Plaintiff appealed the Court's first Order to Amend or Voluntarily Dismiss Complaint and Denying Motion for Preliminary Injunction and Related Motions, ECF No. 8, and the Order Denying Construed Motion for Recusal and Denying Construed Motion for Reconsideration, ECF No. 13. *See* ECF No. 14. The Court revoked Plaintiff's *in forma pauperis* status on appeal. ECF No. 22. On

1 December 30, 2020, the Court granted Plaintiff a second opportunity to amend or  
2 voluntarily dismiss this action. ECF No. 26.

3 Liberally construing the Second Amended Complaint in the light most  
4 favorable to Plaintiff and for the reasons set forth below, the Court finds that Plaintiff  
5 has failed to cure the deficiencies of the initial and First Amended Complaints.  
6 Accordingly, this action will be dismissed with prejudice for failure to state a claim  
7 upon which relief may be granted.

8 Plaintiff complains that the failure to fix a cavity detected during his prison  
9 intake process violated his Eighth Amendment right against cruel and unusual  
10 punishment. ECF No. 27 at 12. The Court is unable to infer from the facts presented  
11 “acts or omissions sufficiently harmful to evidence deliberate indifference to serious  
12 medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

13 Plaintiff asked to have his teeth cleaned in a Health Services Kite and  
14 indicated that he had not had his teeth cleaned for six years. ECF No. 27 at 24. At  
15 that time, he did not mention the existence of a cavity. *Id.* at 13.

16 Months later, the CRCC dentist, Defendant Cassidy Blount, examined  
17 Plaintiff and confirmed that he had a large cavity that appeared to be getting close  
18 to the middle root. ECF No. 27 at 13. Plaintiff claims Defendant Blount told him to  
19 “watch the Call Outs for when he would fix the cavity and also for a teeth cleaning.”  
20 *Id.* at 14. Plaintiff admits the cavity “did not hurt” at that time. *Id.* at 15.

1 After that, a hygienist cleaned Plaintiff's teeth and allegedly told him to  
2 "watch the Call Outs for the cavity filling." ECF. No. 27 at 14. A notation of  
3 "Fillings" was written in the space for "Next Visit." *Id.* at 26. Nevertheless, Plaintiff  
4 was not called out and the cavity was not fixed. *Id.* at 14. Plaintiff asserts that he  
5 "patiently waited" until a preexisting filling directly above the cavity caved in over  
6 six months later. *Id.* at 15.

7 Plaintiff contends that he experienced "substantial pain" and sent a kite to  
8 dental that day. ECF No. 27, at 15. Although Plaintiff may have meant to state that  
9 the cavity was "no[w] hurting," *id.*, he actually wrote that the cavity was "not  
10 hurting." *Id.* at 27. He expressed only his fear that "it will get worse very soon," and  
11 demanded to have the cavity "fixed immediately." *Id.* at 15. Unfortunately, due to  
12 the COVID-19 pandemic, restrictions were placed on dental work that produced  
13 aerosols, including filling cavities. *Id.* Defendant Blount communicated this to  
14 Plaintiff the next day. *Id.*

15 Plaintiff declared a dental emergency a little over a week later, when the  
16 preexisting filling fell out, and Defendant Blount saw him the same day. ECF No.  
17 27 at 16. At that time, Defendant Blount informed Plaintiff that the tooth was no  
18 longer restorable and presented extraction as the only option. *Id.* Plaintiff refused.  
19 *Id.* Plaintiff was also offered the option of Offender Paid Healthcare. *Id.* at 28. He  
20 makes no assertion that he pursued this option.

1 Plaintiff asserts that he learned that the examination notes regarding his cavity  
2 were altered at an unknown time to “cross out” the notation “DO” and to add “(Deep)  
3 EXT” which Plaintiff presumes means “extraction.” ECF No. 27 at 14–15.  
4 Regardless, Plaintiff’s speculations are insufficient to show that Defendant Blount  
5 acted with deliberate indifference to his serious dental health needs.

6 At worst, Plaintiff is alleging that Defendant Blount failed to schedule an  
7 appointment to have Plaintiff’s cavity filled either after he first examined the  
8 Plaintiff or following Plaintiff’s teeth cleaning. In the absence of any complaints of  
9 pain by Plaintiff, the failure to schedule a dental procedure, while possibly negligent,  
10 does not show deliberate indifference to a serious medical need. Indeed, even  
11 Plaintiff did not pursue the matter.

12 A showing that a prison official was negligent or medically negligent is not  
13 enough to establish a deliberate indifference claim. *See Hallett v. Morgan*, 296 F.3d  
14 732, 744 (9th Cir. 2002) (“Mere medical malpractice does not constitute cruel and  
15 unusual punishment.”) (internal citation omitted); *Frost v. Agnos*, 152 F.3d 1124,  
16 1130 (9th Cir. 1998) (finding no merit in claims stemming from alleged delays in  
17 administering pain medication, treating a broken nose, and providing a replacement  
18 crutch, because the claims did not amount to more than negligence); *McGuckin v.*  
19 *Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds by WMX*  
20 *Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (stating that mere

1 negligence in diagnosing or treating a medical condition, without more, does not  
2 violate the Eighth Amendment); *Wood v. Housewright*, 900 F.2d 1332, 1334 (9th  
3 Cir. 1990) (holding that even gross negligence cannot establish a constitutional  
4 violation).

5 The Court cannot infer from Plaintiff's allegations that Defendant Blount  
6 acted with deliberate indifference to Plaintiff's serious dental needs. *See Wilson*, 501  
7 U.S. at 297 (Stating that to demonstrate deliberate indifference, a prisoner must  
8 allege facts sufficient to show a culpable state of mind on the part of prison  
9 officials.).

10 Again, differences in judgment between an inmate and prison medical  
11 personnel on appropriate medical diagnosis and treatment are not enough to establish  
12 a deliberate indifference claim. *See Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir.  
13 1989). Plaintiff alleges that when his preexisting filling fell out, he called a dental  
14 emergency and was seen by Defendant Blount that same day. ECF No. 27 at 16.  
15 Defendant Blount explained that the tooth was no longer restorable. *Id.* Plaintiff  
16 declined to have the tooth extracted. *Id.* This difference in judgment on appropriate  
17 treatment is not sufficient to establish a deliberate indifference claim against  
18 Defendant Blount.

19 In the absence of a constitutional violation, Plaintiff has presented no facts  
20 from which the Court could infer that Defendant Superintendent "knew of the

1 violation[ ] and failed to prevent [it],” or he established a custom or policy that lead  
2 to the violation. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); *see also Ybarra*  
3 *v. Reno Thunderbird Mobile Home Vill.*, 723 F.2d 675, 680 (9th Cir. 1984); *Starr v.*  
4 *Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (holding that a supervisor can only be  
5 held liable for his or her own culpable action or inaction).

6 Although granted the opportunity to do so, Plaintiff has failed to state a  
7 Section 1983 claim upon which relief may be granted against Defendants Cassidy  
8 Bount and Jeffrey Uttecht.

9 Accordingly, **IT IS HEREBY ORDERED:**

- 10 **1.** this action is **DISMISSED WITH PREJUDICE** for failure to state a  
11 claim upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2)  
12 and 1915A(b)(1).
- 13 **2.** Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner  
14 who brings three or more civil actions or appeals that are dismissed as  
15 frivolous, malicious, or for failure to state a claim will be precluded  
16 from bringing any other civil action or appeal *in forma pauperis* “unless  
17 the prisoner is under imminent danger of serious physical injury.” 28  
18 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory**  
19 **provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s**  
20 **complaint may count as one of the three dismissals allowed by 28**


1 **U.S.C. § 1915(g) and may adversely affect his ability to file future**  
2 **claims.**

3 3. The Clerk's Office is directed to **ENTER JUDGMENT** and **CLOSE**  
4 this file.

5 4. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal  
6 of this Order would not be taken in good faith and would lack any  
7 arguable basis in law or fact.

8 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
9 provide copies to *pro se* Plaintiff. The Clerk's Office is further directed to provide a  
10 copy of this Order to the Washington State Office of the Attorney General,  
11 Corrections Division.

12 **DATED** this 2<sup>nd</sup> day of March 2021.

13   
14 SALVADOR MENDOZA, JR.  
15 United States District Judge  
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