No. 14-1169

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DONALD A. SMITH,
Plaintiff–Appellant,
v.

TOM DART, et al.,
Defendants–Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
Case No. 1:13-cv-05034
The Honorable Amy J. St. Eve

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFF–APPELLANT DONALD A. SMITH

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ORAL ARGUMENT REQUESTED

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Disclosure Statement

I, the undersigned counsel for the Plaintiff–Appellant, Donald A. Smith, furnish the following list in compliance with Fed. R. App. P. 26.1 and Cir. R. 26.1:

1. The full name of every party or amicus the attorney represents in the case:
Donald A. Smith

2. Said party is not a corporation.

3. The names of all law firms whose partners or associates are expected to appear for the party before this Court:
Sarah O'Rourke Schrup (attorney of record) and Matthew David Heins (senior law student) of the Bluhm Legal Clinic at the Northwestern University School of Law.

No law firm partners or associates appeared for the party in the district court.

/s/ Sarah Schrup
Date: November 25, 2014

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes X No

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Table of Contents

Table of Authorities

Cases

Statutes

Rules

Other

Jurisdictional Statement

Appellant Donald A. Smith filed this lawsuit pursuant to 28 U.S.C. § 1983, alleging various civil rights violations arising from his pretrial detention at the Cook County Jail that encompassed wage, work, and conditions-of-confinement claims. The United States District Court for the Northern District of Illinois, Eastern Division, had jurisdiction over Mr. Smith's civil action under 28 U.S.C. § 1331.

Mr. Smith filed suit in the district court on July 6, 2013. (A.1.)[1] Through preliminary review under the Prison Litigation Reform Act of 1996, as amended, 28 U.S.C. § 1915A, the court dismissed Mr. Smith's work- and wage-related claims on July 18, 2013. (A.6.) On December 3, 2013, the district court dismissed Mr. Smith's conditions-of-confinement claims without prejudice pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (A.22.) On January 27, 2014, the district court terminated Mr. Smith's suit with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (A.38.) Mr. Smith filed Notice of Appeal on January 24, 2014 (A.39), which became timely and effective upon the district court's entry of final judgment, *see Roe v. Elyea*, 631 F.3d 843, 855 (7th Cir. 2011).

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, which grants jurisdiction of "all final decisions of the district courts of the United States" to its courts of appeal.

[1] Citations to the appendices required under Circuit Rules 30(a) and 30(b) are designated (A.__). Citations to the record from the district court that are not included in the appendix are designated (R.__).

Statement of the Issues

I. Whether the district court failed to grant sufficiently liberal construction to Mr. Smith's filings as a *pro se* litigant.

II. Whether a pretrial detainee states valid wage, work, or conditions-of-confinement claims under § 1983 when he alleges that: (1) he was compelled to perform arduous work over long hours for just three dollars per day; (2) the jail failed to provide for his basic needs, serving only nutritionally inadequate meals while charging exorbitantly high food prices in the commissary; and (3) the jail and its food were infested with pests, the cells were uncomfortably cold, and the water was polluted.

Statement of the Case

Donald A. Smith is an honorably discharged veteran of the U.S. Armed Forces. (A.4.) He has lived as a pretrial detainee in the Cook County Jail awaiting trial for almost two years, since December 2012. (A.11; A.26.) Shortly after his arrival, in January 2013, Mr. Smith was booked into Division Five, where he began working in the jail laundry as a part of a veterans' program. (A.4; A.10.) Mr. Smith was initially informed that the program would: (1) offer him the opportunity to live in a special wing for veterans, removed from the inherent dangers of the general jail population; (2) allow his case to proceed in veterans' court; and (3) pay him to work in the jail laundry while he awaited trial. (A.4.)

Like the residents in other divisions of the Cook County Jail, Mr. Smith was subjected to intolerable living conditions in Division Five. Insects infested his cell. (A.4.) He found cockroaches and mice in his food. (A.4.) The water was contaminated and toxic. (A.11.) His cell was inadequately heated during the frigid winter months. (A.13.) He was never allowed to go outside for recreation or exercise. (A.4.) And Mr. Smith and those that worked with him were fed nutritionally inadequate meals: every morning, the jail provided Mr. Smith only a single egg with a half cup of cereal with milk and a small packet of Kool-Aid for breakfast; every afternoon, the Kool-Aid came with a peanut butter sandwich and some cookies. (A.4.) Although Mr. Smith theoretically could have supplemented his diet at the commissary, the extreme price markups at the commissary kept him from doing so.

(A.4; A.11) (alleging that commissary is overpriced, claiming that it charges $4.96 for 4.5 ounces of chicken and $0.92 for Ramen Noodles).

This should come as no surprise to anyone familiar with the Cook County Jail. No stranger to civil rights suits, it has been subject to continuous injunction for the last seven years, and its unconstitutional conditions are well documented in Department of Justice reports. Letter from Grace Chung Becker, Acting Assistant Attorney General, U.S. Dep't of Justice, Civil Rights Div., to Todd H. Stroger, Cook Cty. Bd. President, and Thomas Dart, Cook Cty. Sheriff 3, 75–79 (Jul. 11, 2008), [hereinafter Cook Cty. Jail Findings Letter] *available at* http://www.justice.gov/crt/about/spl/documents/CookCountyJail_findingsletter_7-11-08.pdf ("[E]nvironmental and sanitation deficiencies at CCJ result in unconstitutional living conditions for inmates. . . . It was rare to find hot water availability in a cell, and we observed many inmates locked in cells for as long as 26 hours with no access to drinking water. . . . The three major pest problems observed during our site visits involved mice, cockroaches and drain flies. . . . [In the kitchens, i]nmate workers were not utilizing gloves or hairnets, numerous sinks had clogged drains, and excessive garbage was piled on the floor.");[2] *'A Serious Problem': U.S. Attorney Says Cook County Jail Falls Short of Basic Standards*, Chi. Trib., Jul. 18, 2008, http://articles.chicagotribune.com/2008-07-18/news/0807180213_1_cook-county-jail-jail-cell-

[2] Among other maladies, the Department of Justice letter also describes inoperable and flooding sinks, toilets, and showers; persistent in-cell plumbing leaks; and dusty and unchecked mousetraps left unattended for long periods of time. Cook Cty. Jail Findings Letter, *supra*, at 74–76.

inmates ("Cook County Jail does not meet minimum constitutional standards and routinely puts inmates at serious risk . . . .").

Mr. Smith's laundry job made things worse. He and his fellow veterans bore responsibility for the entire jail population's laundry.[3] (A.4.) Work began every morning at five or six o'clock and ended at around one o'clock in the afternoon. (A.4.) Mr. Smith was forced to remain on his feet throughout the workday in a stiflingly hot, malodorous room—a task rendered especially difficult because he did not have enough nutritious food to eat. (A.4.) As compensation for this difficult work, Mr. Smith earned just three dollars per day. (A.4.) He nonetheless stuck with laundry job until November 18, 2013, in large part because if he did not participate, jail officials threatened to remove him from the veterans' program altogether (revoking his right to have his case tried in veterans' court and reassigning him to live among the general jail population, in which he felt unsafe). (A.12.)

On July 6, 2013, Mr. Smith filled out a complaint form and filed this suit in the Northern District of Illinois under the Civil Rights Act, as amended, 42 U.S.C. § 1983 (2012), against the Cook County Sheriff and two other jail officials. He sought monetary relief for the sub-minimum wages he had earned working in the laundry program, and injunctive relief to address the standard of living and work conditions to which he had been subjected. The district court granted Mr. Smith

[3] The Cook County jail is the largest single site jail in the United States. *See* Steve Schmadeke, *Expert: Cook County Jail One of the Most Dangerous in Country*, Chi. Trib., Oct. 9, 2014, http://www.chicagotribune.com/news/ct-cook-jail-violence-met-20141008-story.html. It houses at least 9,800 men and women daily. *See* Monica Davey, *Federal Report Finds Poor Conditions at Cook County Jail*, N.Y. Times, Jul. 18, 2008, http://www.nytimes.com/2008/07/18/us/18cook.html.

leave to proceed in forma pauperis, but denied his request for appointed counsel. (A.6; A.20.)

Pursuant to the Prison Litigation Reform Act of 1996, the district court conducted its preliminary review of the complaint on July 18, 2013. (A.6.) As part of that review, the district court was to identify cognizable claims or to dismiss any part of the complaint that was "frivolous, malicious, or fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915A(b)(1) (2012). The district court found that Mr. Smith stated colorable claims as to his conditions of confinement. (A.7.) Holding, however, that Mr. Smith had "no constitutional right to be paid for his jail job assignment at all, let alone in accordance with minimum wage laws" and that Mr. Smith's "allegation that he [had] to work 7- and 8-hour days standing in a 'hot, smelly room' [was] insufficiently egregious to rise to the level of a constitutional violation," the court summarily dismissed Mr. Smith's work- and wage-related claims. (A.7.)

On September 18, 2013, Defendants moved to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim or, alternatively, for a more definite statement under Rule 12(e). (R.12 at 3.) In this motion, Defendants did not challenge the legal sufficiency of Mr. Smith's allegations, but rather solely focused on the factual sufficiency of the claims. (R.12 at 3) (arguing that Mr. Smith's complaint did not place Defendants on notice because it did not allege enough specific facts and did not set forth dates or durations of the alleged misconduct). Mr. Smith responded in short order, submitting two letters to the district court in which

he set forth the additional details of his living and working conditions. (A.10) (Oct. 7, 2013); (A.15) (Oct. 9, 2013). Though these letters were not titled "Response to Motion to Dismiss," their substance tracked Defendants' motion and attempted to address its concerns. (A.10; A.15.)

For its part, the district court did not address one of Mr. Smith's letters and treated the second as a motion, which it then denied.[4] On December 3, 2013, the district court granted what it termed Defendants' "uncontested" motion to dismiss. (A.22.) As noted above, in its § 1915A review the district court had found that Mr. Smith had alleged legally sufficient conditions-of-confinement claims in his complaint. Although Defendants had not challenged the legal validity of those claims, the district court held that Mr. Smith's allegations now did *not* rise to the level of unconstitutionally egregious treatment or confinement conditions. (A.23–25.) The district court dismissed without prejudice, instructing Mr. Smith to file an amended complaint by January 3, 2014. (A.25.)

Eight days later, Mr. Smith filed a letter that he titled "Motion Clarifing [sic] Preivously [sic] Cited Complaint About Conditions at Cook County Jail; Pluss [sic] Reconcideration [sic] of Portion of Same Dismissed under the Eighth Amendment,"

[4] Mr. Smith titled his second letter "Additional Request To Intraduce [sic] Evidence." (A.15.) Aside from a few dead spiders that Mr. Smith enclosed in the envelope, no "additional evidence" was submitted. Rather, Mr. Smith's written submission contained additional allegations that detailed the conditions of his confinement in the Cook County Jail. (A.15) (describing an "infestation" to which he had been exposed and expected would "contaminate the whole compound" because the staff was not addressing the problem). The district court did not acknowledge these additional allegations, and instead denied Mr. Smith's "motion" because "[n]o proof in support of Plaintiff's claims is necessary at this time. Evidence should be submitted in conjunction with a motion (such as a motion for summary judgment), or at trial." (A.19.) The district court also ordered the clerk's office to destroy the spiders. (A.9.)

in which he attempted to revise and resubmit his complaint to the district court. (A.26.) The court construed this filing as a motion for clarification (which it granted) and reconsideration of the dismissal order (which it denied). (A.29.) On its own motion, the district court extended until January 21, 2014, the deadline by which Mr. Smith needed to submit an amended complaint in order to keep his suit alive. (A.30.)

On December 30, 2013, Mr. Smith submitted yet another filing. (A.31.) Once again, Mr. Smith alleged that from the first day he arrived at the Cook County Jail—December 12, 2012—and continuing throughout his time there, Defendants subjected him to unconstitutionally "deplorable" conditions of confinement, providing him with only "toxic," "contaminated," "polluted" water. (A.32, 34–35.) He also incorporated his prior complaint and motions by reference, including all of those earlier allegations relating to his conditions of confinement. (A.31, 34.)

The district court viewed this filing as a motion for reconsideration of its December 3 decision to grant Defendants' motion to dismiss. (A.37.) Accordingly, the district court entered a minute order denying it on January 7, 2014. (A.37.) Explicitly referring to its prior denial of reconsideration and explaining that this new motion would be denied because "a party ordinarily gets 'one shot' at asking the district court to reconsider a ruling," the district court admonished Mr. Smith for "waiting until the Court has ruled and then filing motions to reconsider." (A.37.) It advised him to instead "file a response within the time allotted." (A.37.) Two weeks later, the district court terminated Mr. Smith's case with prejudice. (A.38.)

Mr. Smith timely filed a notice of appeal. (A.39.) Although the district court denied his motion for leave to appeal in forma pauperis, finding that he had not appealed in good faith (A.44), this Court granted Mr. Smith's request on March 25, 2014, and appointed counsel to represent him, (7th Cir. Dkt. 38). The Court specifically requested that the parties address "Smith's claim related to his job at Cook County Jail while he was a pretrial detainee" but also permitted the appeal of any other appropriate issues. (7th Cir. Dkt. 38.)

Summary of the Argument

Donald Smith—a pro se litigant—lodged valid claims against the Cook County Jail for violating his civil rights as a pretrial detainee. The district court, however, erroneously turned him away time and time again, despite his best efforts to comply with the court's instructions.

The district court recognized its obligation to liberally construe Mr. Smith's filings, but did not actually do so at three critical junctures of Mr. Smith's case. First, although the district court initially held in its § 1915A review that Mr. Smith stated legally cognizable conditions-of-confinement claims, it later reversed course and granted Defendants' motion to dismiss because Mr. Smith had not stated legally viable claims. Second, the district court failed to account for Mr. Smith's two filings following Defendants' motion to dismiss and, as a result, deemed it "uncontested" and erroneously granted it without accounting for the additional information Mr. Smith provided. Had it appropriately evaluated the substance of Mr. Smith's filings, the district court would have realized that Mr. Smith contested the motion, addressed its concerns, and made his best efforts to diligently pursue his claim. Third, strict adherence to form over substance similarly infected the district court's final dismissal with prejudice under Rule 41(b). Again ignoring and misconstruing Mr. Smith's multiple filings, the district court simply did not recognize that their substance effectively amended his original complaint.

Furthermore, the district court erroneously dismissed Mr. Smith's wage, work, and conditions-of-confinement claims. First, the district court held that Mr.

Smith could not mount a statutory wage claim as a pretrial detainee. Yet because Mr. Smith alleged conditions that together suggest he was an employee relying on wages to secure his basic needs, Mr. Smith stated a valid wage claim under the Fair Labor Standards Act. Second, by refusing to acknowledge that some working conditions might be so burdensome as to be punitive in nature, the district court erred in summarily dismissing Mr. Smith's work-related claims. Finally, the district court wrongly declined to examine whether the conditions of confinement Mr. Smith alleged as a pretrial detainee might constitute punishment in violation of his Fourteenth Amendment rights. Accordingly, this Court should reverse and remand Mr. Smith's claims to the district court to be considered on the merits.

Argument

I. The district court committed reversible error by failing to liberally construe Mr. Smith's complaint and subsequent filings.

The district court recognized that it was required to liberally construe Mr. Smith's filings, (A.22–23), but it did not fulfill that obligation, *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *cf. Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1027 (7th Cir. 2013) (noting that filing requirements for pro se litigants are less demanding and courts must liberally construe these filings). At every critical juncture, the district court adhered to form over substance, ruling based on what a filing was named rather than on what it contained.

The Federal Rules require no more than what Mr. Smith did here. *See* Fed. R. Civ. P. 8(a)(2) (requiring only a "short and plain" statement of claims). Indeed, the district court expressly recognized Mr. Smith's colorable claims at the start of the case. (A.7) (holding that Mr. Smith's complaint "state[d] a colorable cause of action under the Civil Rights Act relating to Plaintiff's living conditions"). In light of this preliminary finding, Defendants premised their subsequent motion to dismiss not on the legal sufficiency of Mr. Smith's claims, but rather on the lack of specific facts supporting them. (R.12 at 3) (acknowledging that Defendants understood Mr. Smith was alleging "inhumane conditions regarding food portions, pest control issues and lack of recreation time," but arguing his complaint was deficient because it "does not allege when he was housed in Division 5, for how long his constitutional rights were violated, by whom they were violated or even how they were violated"); *see Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Conley v. Gibson*, 355 U.S.

41, 47 (1957)) (stating that dismissal is only appropriate where the plaintiff's complaint fails to either state a cognizable claim or place defendants on notice). Yet the district court nonetheless dismissed Mr. Smith's complaint as legally insufficient under both § 1915A and Rule 12(b)(6), decisions that this Court reviews *de novo*. *Santiago v. Walls*, 599 F.3d 749, 756 (7th Cir. 2010).

The district court's error arose in two interrelated ways. First, construing the pleadings based on their titles rather than their substance, the district court erroneously deemed Defendants' motion to dismiss uncontested and ruled on it as if it were a challenge to the legal sufficiency of Mr. Smith's claims, rather than a challenge to the level of factual detail. Second, adhering to the same approach, the district court never treated Mr. Smith's post-dismissal filings as the attempts to amend the complaint that they were. Consequently, the district court erroneously dismissed Mr. Smith's case with prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b).

A. The district court elevated form over substance in granting Defendants' motion to dismiss.

Mr. Smith's original complaint clearly and concisely alleged that Defendants had:

(1) Paid substandard wages for Mr. Smith's work: "I came to a program here in div. 5 for veterans to work in laundry . . . . The minimum [wage] is $8 65¢ I believe but this program is only paying . . . $3 a day." (A.4.)

(2) Required that Mr. Smith perform such work under oppressive conditions: Mr. Smith alleged he had to work "in a hot, smelly room standing from 5 or 6 A.M. till 1:00 in afternoon daily." (A.4.)[5]

[5] The district court dismissed Mr. Smith's work and wage claims during its preliminary review under § 1915A, a decision that he challenges in Section II, infra.

(3) Provided nutritionally inadequate meals to Mr. Smith: "[G]iven breakfast of 1 egg - 1 2% milk half cup cereal small pak of kool-aid then lunch peanut butter sandwich and cookies with 1 pak of kool-aid." (A.4.)

(4) Subjected Mr. Smith to abysmal conditions of confinement: "Pre-trial detainees are in program and conditions are foul[;] roaches, mice, cockroaches in food[,] no mirrors even to see self shave[,] can't go outside [for] recreation[,] filthy water[,] etc." (A.4.)

Moving to dismiss pursuant to Rule 12(b)(6), Defendants primarily complained that Mr. Smith did not "provide sufficient enough allegations to put the Defendant [sic] on notice of his claims." (R.12 at 1.) Defendants further argued that the complaint did not comply with Rule 8(a)(2), which governs the applicable notice-pleading standards, and complained, in particular, that the complaint lacked "factual content that allows the court to [infer] that the defendant is liable for the misconduct alleged." (R.12 at 2–3.) Specifically, Defendants claimed that Mr. Smith failed to allege "when he was housed in Division 5, for how long, and whether the conditions changed." (R.12 at 3.) Defendants then moved in the alternative for a more definite statement under Rule 12(e) for these very same reasons. (R.12 at 4.) Defendants never once claimed in seeking dismissal that Mr. Smith's legal claim based on his conditions of confinement was not cognizable under § 1983.

Mr. Smith filed a pair of letters in October 2013 that responded to Defendants' concerns and added factual detail to his original complaint. Specifically, he wrote, "**I've been incarcerated here nearly 10 months.**" (A.11.) He noted that "**[s]piders, rats, roaches, centerpides [sic], flys [sic], gnats and beetles are on the tier also there are nest of spiders** under the radiators roaches and gnats

make their home in the showers and toilet area." (A.10.) "[I]n the veteran laundry [and] in our cells we are **continually** exposed to mold in our work areas raw sewer gases and chemical smells we are also exposed to asbestos dust. . . . Also the temparature [sic] in the cells **during the winters** are extremely cold to the point that you may think you were outside." (A.11, 13) (emphasis added). Mr. Smith further alleged that **jail staff** refuses to drink the water because "it is a known fact that the water in the jail is polluted and contains high levels of alpha + beta radiation also cyanide and lead." (A.11.) Mr. Smith's letters were responsive to Defendants' motion, adding detail as to the what, when, and who at issue in his complaint.

The district court construed these filings not with an eye toward what they actually said, but rather according to the titles affixed at the top. A pro se litigant's filings should not be disregarded due to a simple failure to comply with pleading formalities. *Donald v. Cook Cty. Sheriff's Dept.*, 95 F.3d 548, 555–57 (7th Cir. 1996) (holding that the district court erred when it refused to allow the plaintiff—a prisoner proceeding pro se—to amend his complaint by way of a handwritten letter). Rather, it is the substance that matters: when a pro se plaintiff's filings are the "functional equivalent" of what the federal rules require and achieve their aims, a district court should accept and evaluate even technically non-compliant filings. *Smith v. Barry*, 502 U.S. 244, 248 (1992) (quoting *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 317 (1988)). The substance of Mr. Smith's filings showed that he was ameliorating and addressing Defendants' grounds for their motion to dismiss, even

though he named what he filed "In Support of Original Complaint" (A.10) and an "Additional Request To Intraduce [sic] Evidence" (A.15). Yet the district court ignored Mr. Smith's first letter and treated his second according to its label, denying it because "no proof . . . is necessary at this time" and "[e]vidence should be submitted in conjunction with a motion." (A.19.) Because the district court did not take into account the substance of Mr. Smith's filings, it did not consider them when ruling on the motion to dismiss, instead declaring it "uncontested." (A.22.)

Significantly, the district court also misread Defendants' motion to dismiss. The motion primarily targeted factual deficiencies, but the district court treated it as though it challenged the underlying legal merit of the claims. (A.23–25) (purporting to base its ruling on factual insufficiencies that undermined notice, but granting the motion because without alleging truly egregious, continuous, and systematic deprivation, Mr. Smith's claims did not state legally cognizable claims). In ruling on this basis, the district court directly contradicted its earlier finding under § 1915A that the complaint stated cognizable claims. This sua sponte reversal is important because Mr. Smith believed—as he was entitled to do based on the district court's initial ruling—that the only deficiencies he needed to address were factual ones. Mr. Smith's October letters supplying additional facts were directly responsive to Defendants' motion and, construed according to their substance, actually contested Defendants' motion. This is not a case, therefore, where the district court was entitled to simply give the defendants the benefit of the doubt. *Cf. Lekas v. Briley*, 405 F.3d 602, 614–15 (7th Cir. 2005); *Stransky v. Cummins Engine Co.*, 51 F.3d

1329, 1335 (7th Cir. 1995) (indicating that courts are reticent to grant leniency to plaintiffs who fail to contest a motion to dismiss, and granting benefit of the doubt to parties whose motions to dismiss are uncontested). Had the district court liberally construed these filings, it would have denied Defendants' motion.

B. The district court elevated form over substance in failing to accept Mr. Smith's efforts to amend his complaint.

Just as the district court misconstrued Mr. Smith's pre-dismissal filings, it also misconstrued his post-dismissal attempts to augment his complaint. Just one week after the district court dismissed his complaint and granted him thirty days to amend, (A.25), Mr. Smith filed a pleading entitled "Motion Clarifing [sic] Preivously [sic] Cited Complaint About Conditions at Cook County Jail; Pluss [sic] Reconcideration [sic] of Portion of Same Dismissed under the Eighth Amendment." (A.26.) In this letter, Mr. Smith: (1) incorporated by reference the allegations contained in his original complaint; (2) detailed the dates upon which he entered Division Five, began his job in the jail laundry, and was subsequently transferred out of his job and Division Five; and (3) requested that the court consider his claims once more in light of this additional information. (A.26.) Again the district court misconstrued Mr. Smith's filing. Instead of viewing this as what it was—an attempt to amend his initial complaint to comply with the court's order—the district court construed Mr. Smith's letter as a motion to clarify and reconsider the dismissal order itself. The court then clarified the terms of its dismissal order and refused to reconsider it. (A.29.)

Shortly thereafter, Mr. Smith again tried to amend his complaint in accordance with the district court's instructions, (A.31), yet the court simply overlooked his efforts. Mr. Smith submitted a pleading he called "Amended Motion in Support of Original Complaint" in which he reincorporated his earlier filings and set forth further details as to water toxicity in the jail. In its January 7 minute order, the district court construed this pleading as a motion for reconsideration and rejected it. (A.37.) On January 27, 2014, without ever mentioning the letter, the district court issued a final involuntary dismissal under Rule 41(b).

In short, by failing to look at the substance of Mr. Smith's post-dismissal filings, the district court overlooked his repeated attempts to amend his complaint. And although none of these filings was labeled as an "Amended Complaint," Mr. Smith did not need to do that so long as the substance of his filings accomplished that purpose. *Donald*, 95 F.3d at 556. Mr. Smith incorporated by reference the allegations of his original complaint, and added the dates the district court and Defendants sought, as well as additional factual detail about the nature of the constitutional violations. The district court should have accepted these supplemental filings and allowed the suit to proceed, rather than involuntarily dismissing it under Rule 41(b).[6]

[6] A chart summarizing the interplay of the pleadings and the district court's rulings is provided in the Appendix. *See* (A.46.)

II. Mr. Smith properly stated statutory wage claims and constitutional violations under the Thirteenth and Fourteenth Amendments.

The district court erred when it dismissed Mr. Smith's cognizable wage- and work-related claims under § 1915A and his valid confinement-conditions claims under Rule 12(b)(6). Mr. Smith stated a valid claim under the Fair Labor Standards Act based on his substandard wages. Furthermore, Mr. Smith's allegation that he was compelled to work under horrific conditions was sufficient to state a constitutional claim under the Thirteenth and Fourteenth Amendments. Finally, Mr. Smith adequately alleged that the conditions of his confinement violated his Fourteenth Amendment due process rights. Like its review of the district court's procedural errors in dismissing a complaint, this Court reviews the substantive basis of a district court's dismissal *de novo*. *Maddox v. Love*, 655 F.3d 709, 718 (7th Cir. 2011).

A. Mr. Smith stated a valid claim for compensation under the Fair Labor Standards Act.

Congress enacted the Fair Labor Standards Act ("FLSA") to protect worker welfare in a broad and comprehensive way. 29 U.S.C. § 206(a) (2012); *Vanskike v. Peters*, 974 F.2d 806, 810 (7th Cir. 1992). To ensure that workers' wages satisfy a baseline standard of living, the FLSA requires that all employers pay a statutorily mandated minimum wage to their employees. 29 U.S.C. § 206(a)(1). Wages are crucial in the free market so that employees can satisfy their own basic needs. The FLSA applies to *all* employers in the free market, including state government

employers. *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 555–56 (1985).

The crux of the inquiry, then, is whether an employment relationship exists in a free market. To answer this question, this Court has crafted a two-part test. First, the Court asks whether an employer exercises enough control over a purported employee to establish an employment relationship (the "economic-reality" test). *Vanskike*, 974 F.2d at 808; *Sec'y of Labor v. Lauritzen*, 835 F.2d 1529, 1535 (7th Cir. 1987). The test is construed broadly in favor of finding an employment relationship, and thus the FLSA applies in most employment contexts. *Lauritzen*, 835 F.2d at 1535. The second part of the test carves out a narrow exception to the economic-reality test: If the employer's control is so complete as to remove the employee's need to use his wages in the free market in order to subsist, the worker-welfare rationale of the Act is no longer relevant and the Court will not apply it. *Vanskike*, 974 F.2d at 811.

The mine run of prison employment falls directly into this FLSA exception. The *raison d'être* of prison confinement is to provide the precise kind of custodial control that meets prisoners' basic necessities and obviates the need for wages. *Bennett v. Frank*, 395 F.3d 409, 409–410 (7th Cir. 2005); *Vanskike*, 974 F.2d at 810–11; *cf. Sanders v. Hayden*, 544 F.3d 812, 814 (7th Cir. 2008) (citing *Bennett* and *Vanskike* for the proposition that the FLSA is not typically applicable to inmates). Yet that is not universally true, and this Court has noted that "prisoners are not categorically excluded from the FLSA's coverage simply because they are prisoners." *Vanskike*,

974 F.2d at 808. The *Vanskike* Court thus recognized that determining whether a prisoner is an "employee" covered by the FLSA requires an examination of the totality of the circumstances governed by the purposes of the FLSA and the custodial context in which prison labor occurs. On the "no employment" end of the spectrum are cases like *Vanskike*, in which prisoners are assigned to perform housekeeping duties; on the "employment" end are cases like *Watson v. Graves*, 909 F.2d 1549 (5th Cir. 1990), in which prisoners work for a company outside the prison in a work-release program.

This Court has never examined whether a pretrial detainee may state a claim under the FLSA, but it stands to reason that they similarly cannot be categorically excluded from the statute's coverage due merely to their status as pretrial detainees. In fact, categorical exclusion from the FLSA seems even *less* appropriate for pretrial detainees. After all, unlike prisoners, pretrial detainees may not constitutionally be compelled to work involuntarily. Thus, some indicia of traditional employment that are necessarily absent in prisoner cases readily appear in pretrial detainee cases.

The few courts that have squarely considered pretrial detainee FLSA claims have rejected them on their facts, not because such claims are invalid. *Cf. Tourscher v. McCullough*, 184 F.3d 236, 243–44 (3d Cir. 1999) (declining to apply FLSA to pretrial detainee who (1) alleged that he was compelled to work less than 17 hours per week in the cafeteria for substandard wages, and (2) did not allege that the jail provided unconstitutionally inadequate custodial care); *Villarreal v. Woodham*, 113

F.3d 202, 206 (11th Cir. 1997) (affirming dismissal of pretrial detainee's FLSA claim where detainee (1) alleged that he was told he would be compensated—but never was—for performing translation services in jail, and (2) did not allege that his basic needs were not met). The facts of these cases made them fall closer to the "no employment" end of the spectrum; their plaintiffs never alleged that their basic needs were not being met by the jail facility, and they failed to demonstrate that they were engaged in meaningful work to collect wages that would help them secure their needs.

As Mr. Smith's case amply demonstrates, there is a role for FLSA protection where, as here, a pretrial detainee alleges that he did long, arduous work in a facility that did not uphold its custodial obligation to provide for his basic needs. Mr. Smith's complaint alleged facts that placed him squarely within the FLSA and that distinguished his case from all of the prisoner cases that declined to apply it.

First, he alleged that his job in the laundry was strenuous and demanding, requiring him to process the laundry "for total current population of 12,500 or more during the course of a week in a hot, smelly room standing from 5 or 6 A.M. till 1:00 in afternoon daily." (A.4.) Second, he explained that the jail did not adequately provide for his basic needs, subjecting him to an environment infested with "spiders, rats, roaches, centerpides [sic], flys [sic], gnats and beetles," water polluted by various toxins, and meals that were nutritionally inadequate and prepared under unsanitary conditions. (A.4; A.10–12.) And though he could supplement the diet the jail provided for him by visiting the commissary, Mr. Smith pointed out in his

complaint and subsequent filings that food prices in the commissary were exorbitantly above market. (A.11.) By claiming that Defendants pushed Mr. Smith's strength to the limit, subjected him to exhausting work, under-nourished him, and charged substantial fees for him to supplement his diet, Mr. Smith alleged that the jail failed in its custodial role, entering him into the "free market" and making his wages crucial to securing his basic needs. Mr. Smith's claim thus fell squarely within the ambit of the FLSA.

The district court did not analyze whether Mr. Smith's wage claims were cognizable under the FLSA. Instead, citing *Vanskike* and other *prisoner* cases, the district court held that "compensation for prison labor is by grace of the state" and summarily dismissed Mr. Smith's wage claims. (A.7.) Mr. Smith was not even given the opportunity to amend his complaint to allege facts that would place his claims closer to the "employment" end of the spectrum—the district court simply held that a pretrial detainee in Mr. Smith's position had no right to statutory wages. (A.7.) But the district court erred by failing to recognize that compensation for Mr. Smith's pretrial *jail* labor might *not* be "by grace of the state"—especially in light of the economic realities of Mr. Smith's working relationship with the jail, his allegation that the jail breached its custodial duties, and his "free-market" status. Because so many of the "indicia of traditional free-market employment contemplated under the FLSA" are present in this case, the FLSA should apply. *Villarreal*, 113 F.3d at 207. Accordingly, this Court should reverse the district court's erroneous dismissal of Mr. Smith's wage claim.

B. Mr. Smith sufficiently alleged a violation of his rights under the Thirteenth and Fourteenth Amendments.

The district court improperly dismissed Mr. Smith's work-related allegations because they stated a constitutional claim under the Thirteenth and Fourteenth Amendments. The Thirteenth Amendment specifically forbids involuntary servitude, except for convicted prisoners, and the Fourteenth Amendment guarantees due process of law. U.S. Const. amend. 13; U.S. Const. amend 14. The state may not subject pretrial detainees—presumptively innocent in the eyes of the law—to involuntary servitude, nor may it subject them to punishment of any kind, *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

Though the state may require pretrial detainees to perform general housekeeping responsibilities, *Bijeol v. Nelson*, 579 F.2d 423, 424 (7th Cir. 1979), the state may not compel them to do more. This Court has not examined how much or what kind of work exceeds the limits of general housekeeping. Other circuits, however, have found constitutional violations where pretrial detainees were compelled to take on more than mere housekeeping responsibilities measured by the amount of time the detainees were required to work and the nature of the labor in which they were engaged. *See Harden v. Bodiford*, 442 F. App'x 893, 895 (4th Cir. 2011) (holding that if true, allegations of long weeks of work serving meals, sorting and distributing clothes and blankets, scrubbing jail facilities, and emptying trash ten hours per day "are sufficient to sustain a claim of unconstitutional punishment"); *cf. Tourscher*, 184 F.3d at 242 (finding no constitutional violation where plaintiff performed non-labor-intensive work less than seventeen hours per

week, but acknowledging that the relevant inquiry under the Thirteenth and Fourteenth Amendments is the nature of services and amount of time required to complete them).

Moreover, jail officials may not force pretrial detainees to work by threatening harsh potential consequences. This Court has held that officials may give pretrial detainees a choice between performing reasonable work or being segregated from the rest of the jail community. *Bijeol*, 579 F.2d at 425. It has not, however, held that a jail may present a pretrial detainee with the impossible choice between unreasonable work and intolerable or dangerous living conditions. "Pitch-in or sit-in" choices violate pretrial detainees' liberty interests. *See Martinez v. Turner*, 977 F.2d 421, 423 (8th Cir. 1992); *Chestnut v. Magnusson*, 942 F.2d 820, 823 (1st Cir. 1991).

Mr. Smith's complaint alleged that he was presented with precisely this type of Hobson's choice. He alleged, on the one hand, that his job in the jail laundry required him to work standing up for seven to eight hours at a time in a hot, malodorous room. (A.4.) He also alleged that his meals were nutritionally inadequate and that his water was toxic, exacerbating the effect of his already difficult work. On the other hand, Mr. Smith alleged that he did not feel as though he could refuse to work; his understanding was that participation in the program secured him benefits that he would not otherwise have, such as the opportunity to have his case proceed in veterans' court. (A.4.) He also alleged that jail officials "continually threatened" to "place[him] in [the jail's] general population with the

gang bangers." (A.12.) His fear of being inserted into the general population compelled Mr. Smith to work.[7]

The district court's summary dismissal of Mr. Smith's work-conditions claims wrongly conflated the pretrial detainee standard with the prisoner standard. Relying only on this Court's precedent denying a *prisoner's* right to *wages*, the district court failed to acknowledge that the Thirteenth and Fourteenth Amendments provide categorically different protection for pretrial detainees. (A.7) (citing *Vanskike*, 974 F.2d at 810–11). The district court's unsupported holding that Mr. Smith's "allegation that he has to work 7- and 8-hour days standing in a 'hot, smelly room' is insufficiently egregious to rise to the level of a constitutional violation" reflects its misunderstanding of the applicable law. (A.7.) Mr. Smith's allegations, assumed true and taken together, sufficiently raised a valid claim that he was subjected to involuntary servitude and punishment in violation of his Thirteenth or Fourteenth Amendment rights.

C. Mr. Smith sufficiently alleged a conditions-of-confinement claim under the Fourteenth Amendment.

Pretrial detainees are presumptively innocent in the eyes of the law. Accordingly, the Fourteenth Amendment prohibits *any punishment at all* for pretrial detainees. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). *But cf.* U.S. Const. amend. 8 (prohibiting only cruel and unusual punishment against convicted

[7] Some of these allegations were levied after the district court had already dismissed Mr. Smith's work- and wage-related claims through § 1915A preliminary review. Mr. Smith, however, continually supplemented his complaint and requested that the district court reconsider its premature dismissal of his work- and wage-related claims in light of these added facts. The court never even acknowledged the later-added details, nor did it ever evaluate whether they might merit reconsideration.

prisoners). Jail officials punish pretrial detainees when they either: (1) act with the intent to punish; or (2) engage in practices or implement procedures that are not rationally related to the legitimate government purposes of jailing pretrial detainees—namely, protecting public safety and ensuring that criminal defendants appear for trial. *Bell*, 441 U.S. at 537–38.

Although lower courts routinely conflate the Eighth and Fourteenth Amendment tests, allowing state officials to treat pretrial detainees in virtually the exact same way they treat convicted prisoners, this Court has repeatedly held that pretrial detainees' rights are likely greater than those of convicted prisoners. *See, e.g.*, *Forrest v. Prine*, 620 F.3d 739, 744 (7th Cir. 2010) (pretrial detainees have "at least as much, and probably more, protection" under the Fourteenth Amendment than do prisoners under the Eighth); *Hart v. Sheahan*, 396 F.3d 887, 892–93 (7th Cir. 2005) (same); *Jackson v. Ill. Medi-Car, Inc.*, 300 F.3d 760, 764 (7th Cir. 2002) (same). At a minimum, this Court has never definitively held that the tests are coextensive for pretrial detainees and prisoners in all contexts—some gray area does exist.

There is good reason for such a gray area in an age in which corporal punishment is no longer employed as a punitive tool of the state. *See* John Braithwaite, *A Future Where Punishment is Marginalized: Realistic or Utopian?*, 46 U.C.L.A. L. Rev. 1727, 1731 (1999) (describing the decline and eventual extinction of corporal punishment in the United States from 1820–1970). Today, punishment is primarily accomplished by the simple act of incarceration itself. But if punishment and confinement are now coextensive, and if pretrial detainees may

not be subject to any punishment at all, their rights are inherently greater in at least some way. *But see Hart*, 396 F.3d at 892–93 (stating that in conditions-of-confinement claims, the interests of pretrial detainees and convicted prisoners "merge," but failing to consider whether those interests diverge where incarceration is, itself, punishment).

Mr. Smith's claims, construed in the light most favorable to him, alleged a violation within the very gray area that this Court has recognized but not defined. And that is all that he needed to do in order to survive a motion to dismiss. Yet the district court mechanically applied Eighth Amendment standards to Mr. Smith's claims, holding that Mr. Smith needed to—but did not—allege conditions of confinement so appalling and enduring as to rise to the level of cruel and unusual punishment. (A.24) (explaining that some intolerable conditions were simply part and parcel of the constitutionally permissible punishment of convicted prisoners and that "[e]ven a dead mouse in an inmate's meal is only a minimal deprivation"). By conflating the Eighth Amendment with the Fourteenth, the district court leapt to the conclusion that Mr. Smith did not allege a viable constitutional claim. The district court never considered whether Mr. Smith's claims might have sufficiently alleged a Fourteenth Amendment violation *even if* his allegations would be insufficient to show an Eighth Amendment violation. By failing to acknowledge that some gray area exists, and by refusing to consider whether Mr. Smith's claims fell somewhere within it, the district court erroneously dismissed Mr. Smith's complaint.

Conclusion

For the foregoing reasons, Appellant respectfully requests that this Court reverse the district court's dismissal and remand for further proceedings.

Respectfully Submitted,

Donald A. Smith
Plaintiff–Appellant

By: /s/ SARAH O'ROURKE SCHRUP
Attorney

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Counsel for Plaintiff–Appellant,
DONALD A. SMITH

No. 14-1169

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DONALD A. SMITH,

Plaintiff–Appellant,

v.

TOM DART, et al.,

Defendants–Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

Case No. 1:13-cv-05034

The Honorable Amy J. St. Eve

Certificate of Compliance with Federal Rule of Appellate Procedure 32(a)(7)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(b) because this brief contains 7272 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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 Office Word 2010 in 12 point Century Schoolbook font with footnotes in 11 point Century Schoolbook font.

/s/ Sarah O'Rourke Schrup
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Phone: (312) 503-0063

Dated: November 25, 2014

No. 14-1169

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DONALD A. SMITH,
Plaintiff-Appellant,
v.

TOM DART, ET AL.,
Defendants-Appellees.

REQUIRED RULE 30(a) APPENDIX OF PLAINTIFF-APPELLANT DONALD A. SMITH

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Senior Law Student

Counsel for Plaintiff-Appellant,
DONALD A. SMITH

RULE 30(a) APPENDIX TABLE OF CONTENTS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Donald A. Smith

(Enter above the full name of the plaintiff or plaintiffs in this action)

vs.

13 C 5034
Judge Amy J. St. Eve
Magistrate Judge Jeffrey Cole

Tom Dart, Sheriff of CCJ
Director of Cook County Jail
Superintendant of Division 5

(Enter above the full name of ALL defendants in this action. Do not use "et al.")

CHECK ONE ONLY:

✓ **COMPLAINT UNDER THE CIVIL RIGHTS ACT, TITLE 42 SECTION 1983 U.S. Code** (state, county, or municipal defendants)

_____ **COMPLAINT UNDER THE CONSTITUTION ("BIVENS" ACTION), TITLE 28 SECTION 1331 U.S. Code** (federal defendants)

_____ **OTHER** (cite statute, if known)

BEFORE FILLING OUT THIS COMPLAINT, PLEASE REFER TO "INSTRUCTIONS FOR FILING." FOLLOW THESE INSTRUCTIONS CAREFULLY.

I. Plaintiff(s):

A. Name: Donald, A, Smith

B. List all aliases: None

C. Prisoner identification number: #I.D. 20121212005 ~~2012120655~~

D. Place of present confinement: Cook County Jail

E. Address: 2700 S° California Ave Chicago, IL, 60608 Division 5

(If there is more than one plaintiff, then each plaintiff must list his or her name, aliases, I.D. number, place of confinement, and current address according to the above format on a separate sheet of paper.)

II. Defendant(s):

(In A below, place the full name of the first defendant in the first blank, his or her official position in the second blank, and his or her place of employment in the third blank. Space for two additional defendants is provided in B and C.)

A. Defendant: Tom Dart

Title: Sheriff of Cook county

Place of Employment: 50 W Washington Chicago IL

B. Defendant: Director of Cook County Jail

Title: Director of Cook County Jail

Place of Employment: 2700 S° California

C. Defendant: Superintendant Eberhart

Title: Superintendant of Cook county Jail Div-5

Place of Employment: 2700 S° California

(If you have more than three defendants, then all additional defendants must be listed according to the above format on a separate sheet of paper.)

III. List ALL lawsuits you (and your co-plaintiffs, if any) have filed in any state or federal court in the United States:

A. Name of case and docket number: NONE

B. Approximate date of filing lawsuit: NONE

C. List all plaintiffs (if you had co-plaintiffs), including any aliases: NONE

D. List all defendants: NONE

E. Court in which the lawsuit was filed (if federal court, name the district; if state court, name the county): NONE

F. Name of judge to whom case was assigned: NONE

G. Basic claim made: NONE

H. Disposition of this case (for example: Was the case dismissed? Was it appealed? Is it still pending?): NONE

I. Approximate date of disposition: NONE

IF YOU HAVE FILED MORE THAN ONE LAWSUIT, THEN YOU MUST DESCRIBE THE ADDITIONAL LAWSUITS ON ANOTHER PIECE OF PAPER, USING THIS SAME FORMAT. REGARDLESS OF HOW MANY CASES YOU HAVE PREVIOUSLY FILED, YOU WILL NOT BE EXCUSED FROM FILLING OUT THIS SECTION COMPLETELY, AND FAILURE TO DO SO MAY RESULT IN DISMISSAL OF YOUR CASE. CO-PLAINTIFFS MUST ALSO LIST ALL CASES THEY HAVE FILED.

IV. **Statement of Claim:**

State here as briefly as possible the facts of your case. Describe how each defendant is involved, including names, dates, and places. **Do not give any legal arguments or cite any cases or statutes.** If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

I am a honorably discharged veteran of the United States Army. I came to a program here in div. 5 for Veterans to work in laundry and get resources of benefits etc. Along with getting case sent to Veterans Court. The minimum is #6 65k I believe but this program is only paying Veterans who have defended this country to do laundry sheets, blankets, towels, face clothes, pants and shirts plus personal items such as briefs, t-shirts, long johns for total current population of #12,500 or more during the course of a week in a Hot, smelly room standing from 5 or 6 am till 100 in afternoon daily given breakfast of egg - 1 2% milk half cup cereal small pak of Kool-Aid then lunch peanut butter sandwich and cookies with 1 pak of Kool-Aid. Pre-trial detainees are in program and conditions are foul roaches mice, cockroaches in food No mirrors even to see self shave Can't go outside recreation filthy water etc. Also Vets may go weeks without pay! receiving #3 a day

I'm Also in need of copies Please Supply and charge To my Account

V. **Relief:**

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

To receive compensation for Wages not paid along with punitive and compsatory damages. Also for Cook County to never again be allowed to work anyone especially Veterans for less than minimum wage and for program to be under the Veterans Administration Supervision.

VI. The plaintiff demands that the case be tried by a jury. ☒ YES ☐ NO

CERTIFICATION

By signing this Complaint, I certify that the facts stated in this Complaint are true to the best of my knowledge, information and belief. I understand that if this certification is not correct, I may be subject to sanctions by the Court.

Signed this 6 day of July, 2013

Donald A Smith
(Signature of plaintiff or plaintiffs)

Donald, A, Smith
(Print name)

20121212065
(I.D. Number)

(Address)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Donald A. Smith (#2012-1212065),	)	
	)	
Plaintiff,	)	Case No. 13 C 5034
	)	
v.	)	
	)	Judge Amy J. St. Eve
Tom Dart, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

Plaintiff's motion for leave to proceed *in forma pauperis* [#3] is granted. The Court authorizes and orders Cook County Jail officials to deduct $14.40 from Plaintiff's account, and to continue making monthly deductions in accordance with this order. On the Court's own motion, Plaintiff's claims concerning his job assignment are summarily dismissed on preliminary review pursuant to 28 U.S.C. § 1915A. The Court directs the Clerk of Court to: (1) send a copy of this order to the Supervisor of Inmate Trust Fund Accounts, Cook County Dept. of Corrections Administrative Office, Division V, 2700 S. California, Chicago, Illinois 60608; (2) issue summonses for service on Defendants by the U.S. Marshal; and (3) mail Plaintiff a magistrate judge consent form and filing instructions along with a copy of this order.

STATEMENT

Plaintiff, an inmate in the custody of the Cook County Department of Corrections, has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that Defendants, correctional officials, have violated Plaintiff's constitutional rights by paying him insufficient wages for a grueling job in the jail laundry; he additionally claims that Defendants are subjecting him to inhumane conditions of confinement with respect to both his work environment and general living conditions.

Plaintiff's motion for leave to proceed *in forma pauperis* is granted. Pursuant to 28 U.S.C. § 1915(b)(1), the Court assesses Plaintiff an initial partial filing fee of $14.40. The supervisor of inmate trust accounts at the Cook County Jail is authorized and ordered to collect, when funds exist, the partial filing fee from Plaintiff's trust fund account and pay it directly to the Clerk of Court. After payment of the initial partial filing fee, the trust fund officer at Plaintiff's place of confinement is directed to collect monthly payments from Plaintiff's trust fund account in an amount equal to 20% of the preceding month's income credited to the account. Monthly payments collected from Plaintiff's trust fund account shall be forwarded to the Clerk of Court each time the amount in the account exceeds $10 until the full $350 filing fee is paid. All payments shall be sent to the Clerk, United States District Court, 219 S. Dearborn St., Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and shall clearly identify Plaintiff's name and the case number assigned to this action. The

Cook County inmate trust account office shall notify transferee authorities of any outstanding balance in the event Plaintiff is transferred from the jail to another correctional facility.

Under 28 U.S.C. § 1915A, the Court is required to conduct a prompt initial review of prisoner complaints against governmental entities or employees. Here, accepting Plaintiff's factual allegations as true, the Court finds that the complaint states a colorable cause of action under the Civil Rights Act relating to Plaintiff's living conditions. Incarcerated persons are entitled to confinement under humane conditions that satisfy "basic human needs." *Rice ex rel. Rice v. Correctional Medical Services*, 675 F.3d 650, 664 (7th Cir. 2012) (citations omitted). The Due Process Clause prohibits conditions that amount to "punishment" of a pretrial detainee. *Bell v. Wolfish*, 441 U.S. 520,535 (1979); *Lewis v. Downey*, 581 F.3d 467, 473 (7th Cir. 2009). Plaintiff describes an inadequate diet, contaminated food, pest infestation, lack of recreation, and unclean water. Furthermore, the personal involvement of senior officials such as the county sheriff and the jail's director may be inferred where (as here) the claims alleged involve "potentially systemic," rather than "clearly localized," constitutional violations. *Antonelli v. Sheahan*, 81 F.3d 1422, 1428-29 (7th Cir. 1996). While a more fully developed record may belie Plaintiff's claims, Defendants must respond to the allegations in the complaint.

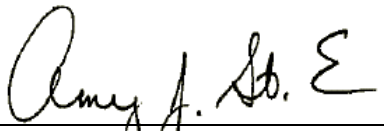
However, the Court summarily dismisses on preliminary review Plaintiff's claims about his work environment and salary. Plaintiff has no constitutional right to be paid for his jail job assignment at all, let alone in accordance with minimum wage laws. In *Vanskike v. Peters*, 974 F.2d 806, 809 (7th Cir. 1992), the U.S. Court of Appeals for the Seventh Circuit held that the Constitution does not require that prisoners be paid for their work. "[T]here is no Constitutional right to compensation for [prison] work; compensation for prison labor is by 'grace of the state' " *Id.* (quoting *Sigler v. Lowrie*, 404 F.2d 659, 661 (8th Cir. 1968)); *accord, Jamal v. Cuomo*, 234 F.3d 1273, 2000 WL 1720624, at *2 (7th Cir. Nov. 15, 2000). Even pretrial detainees may be compelled to perform reasonable work without pay. *Bijeol v. Nelson*, 579 F.2d 423, 424 (7th Cir. 1978); *Speagle v. Ferguson*, No. 10 C 2040, 2010 WL 3724784, *8 (C.D. Ill. Aug. 20, 2010). Therefore, Plaintiff's dissatisfaction with his wages is not actionable under 42 U.S.C. § 1983. Likewise, Plaintiff's allegation that he has to work 7- and 8-hour days standing in a "hot, smelly room" is insufficiently egregious to rise to the level of a constitutional violation.

The Clerk shall issue summonses for service of the complaint on Defendants. The Clerk shall also send Plaintiff a Magistrate Judge Consent Form and Instructions for Submitting Documents along with a copy of this order.

The Court appoints the United States Marshals Service to serve Defendants. The Marshal may send Plaintiff service forms necessary for him to complete in order to serve Defendants with process. The U.S. Marshal is directed to make all reasonable efforts to serve Defendants. With respect to any former jail employee who can no longer be found at the work address provided by Plaintiff, the Cook County Department of Corrections shall furnish the Marshal with Defendant's last-known address. The information shall be used only for purposes of effectuating service [or for proof of service, should a dispute arise] and any documentation of the address shall be retained only by the Marshal. Address information shall not be maintained in the Court file, nor disclosed by the Marshal. The Marshal is authorized to mail a request for waiver of service to Defendants in the manner prescribed by Fed. R. Civ. P. 4(d)(2) before attempting personal service.

Plaintiff is instructed to file all future papers concerning this action with the Clerk of Court in care of the Prisoner Correspondent. **Plaintiff must provide the Court with the original plus a complete judge's copy, including any exhibits, of every document filed.** In addition, Plaintiff must send an exact copy of any Court filing to Defendants [or to defense counsel, once an attorney has entered an appearance on behalf of Defendants]. Every document filed with the Court must include a certificate of service stating to whom exact copies were mailed and the date of mailing. Any paper that is sent directly to the judge or that otherwise fails to comply with these instructions may be disregarded by the Court or returned to Plaintiff.

Date: July 18, 2013



AMY J. ST. EVE
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

Donald A. Smith (#2012-1212065),	)	
	)	
Plaintiff,	)	Case No. 13 C 5034
	)	
v.	)	
	)	Judge Amy St. Eve
Tom Dart, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

Plaintiff has submitted an envelope containing insects and spiders. The Clerk is directed to destroy the envelope. Plaintiff must refrain from submitting any non-paper materials as exhibits.

Dated: October 8, 2013

ENTERED

AMY J. ST. EVE
United States District Court Judge

JH

TO: Judge Amy J. St. Eve Magistrate Judge Jeffrey Cole 13C5034. IN support of original complaint All done due to deliberate indifference. UNCONSTITUTIONAL CONDITIONS OF CONFINEMENT.

1.) INVASION OF PRIVACY phones ARE MONITORED during CONVERSATIONS to Attorneys, FAMILY MEMBERS & WITNESSES. (2.) Food is well below NUTRITIONAL VALUE The ingredients of MEALS HAVE NEVER been REVEALED to pre-TRIAL detainees AS pre-TRIAL detainees we HAVE A Right to NUTRITIONAL MEALS. ALSO foods prepared by UNTRAINED HANDS AND served COLD MOST OF The preparations done by dopesick detainees fresh off The street, TRAYS ON which food is served ARE NOT CLEANED ACCORDING to Adequate HEALTH STANDARDS (3.) Spiders, RATS, ROACHES, centerpides, flys, gNATS AND beetles ARE ON The Tier ALSO There ARE nest of spiders under The RADIATORS ROACHES AND gNATS MAKE Their home IN The Showers AND toilet AREA. I'M LOCATED IN DIVISION 5 Tier 1-H which is on ground Level IN front of The CORRECTIONAL center where insects enter The JAIL I believe we HAVE A Right to SANITARY CONDITIONS

4.) The COOK COUNTY JAIL is OVERCROWED yet only The women ARE given Sheriff furloughs. A violation of equal protection of LAW

5. The LAW library IN division 5 is SMALL AND INADEQUATE There ARE NO NORTHEASTERN LAW BOOKS, NO BOOK to RESEARCH such AS Prisoners Rights, Blacks LAW dictionary, federal LAW BOOKS etc. There is only ONE LAW Clerk who's NOT KNOWLEGDEABLE to INSTRUCT pre-TRIAL detainees IN legal AFFAIRS. A violation of ACCESS to COURT.

6.) The short Handedness of personel and The overcrowding Along with conditions of unconstitutionality have long been Apparent from A court decree well known by The Department of justice in A 92 page study by The same To be Negligent. (7) There is no greivance Committee. (8) Commisary is over priced 4.5 ounces of Chicken for $4.96, Ramen Noodles .12¢ on The street .92¢ here Also The Commisary is run by an out of state organization out of Missouri. I've been incarcerated here nearly 10 months I'm A veteran and work in The veteran laundry in our Cells we Are continually exposed to mold in our work Areas Raw sewer gases and chemical smells we Are Also exposed to Asbestos dust

9.) The C.O's do not drink The water yet we have to and it is A known fact That The water in The Jail is palluted and contains high levels of Alpha + beta Radiation Also cyanide and lead.

10.) I've Also been Though several epidemics while here and previously had Not been Affected until Just Reasontly Those being bird flu and scabies I Reasontly had open heart surgery Last March 2012 And Think I've be Affected with scabies because my Celly has been told by a doctor he has The infestation and I'm waiting on A Cermac Call Cermac staff as A part of The Jail is Also inAdequate i've had blood work done only Twice since i've been here.

Page (2)

11.) The water pollution is documented by The Sun Times And The Tribune As well As The Department of justice

12.) We Are lucky To get Access to The law library once or Twice A month. And At one point in Time i was denied Access for About 4 months. When we Are Allowed Access it is only for one hour At A Time And were only Allowed to obtain Three documents depending on how many pages.

13.) I've Also submitted A motion for Appointment of Counsel before your Office with no Response as of yet.

14.) CermAC would be inAdequately staffed in case of A Major outbreak As mentioned before

15.) I Am Also fearfull of some Type of RetAliAtion if The information i have given you were to get back To certain individuals At The Jail

16.) we Are continually Threatened by being placed in general population with The gang bangers.

17.) There Also Are no mirrors in which to see one self for Grooming purposes Through out The whole of division 5.

18.) we Are Also BArred From Bringing bibles or Religious litArAgure TO court Thus violating freedom from expression of Religion.

19.) pro se complaints should be held to less stringent meAns ThAn Those submitted by An experenced Attorney.

20.) Also The Temparature in The Cells during The winters Are extremely cold To The point That you may Think you were outside.

Certificate of Service

I Donald, A, Smith Affirm under penalty of law That I have submitted A four page document Along with This Certificate of Service Along with some physical evidence As well And That All statements made by my hand Are True And Correct To The best of my knowledge. And That I have placed Those Same in The United States Mail At The Chicago, Illinois, Cook County Jail ON The Date of: 10-03-13

Signature: Donald A Smith

Date of birth: 01-01-57

Detainee no. # 20121212065

Institutional Address: P.O. Box 089002 Cook County Jail Chicago, Illinois. 60608

Div: 5 / Tier: 1-H

13C5034 10-05-13

MA

This is A Additional Request to intraduce evidence Regaurding CASE NO. 13C 5034 before Judge Amy J. St Eve Magistrate Judge Jeffrey Cole. The evidence That i wish to intraduce is described Belowe AND Also The diffuculty That im experencing Trying To do so. Firstly This Evidence proves how common my name is And opens ANother Aspect of This dilima And THAT ASpect happens to be The County Jails medicA facilitys which brings up deliberate indiference AS well. AS in My last communication I had informed you That I had been exposed To AN infestation Thoough no fault of my own This occurence Took place on The same day That i'd Returned from my last court appearance. which was 9-27-13 I imediAtly submitted A medical Request form To be Seen About The problem The date That i'm AM now writing to you happens to be 10-5-13 A Whole week of Suffering The irritation had gotten So bad last night That i had to Apply bleach to my getinial Area To Afford me Some Relief i do believe And infestation of This Nature CAN And should be processed Sooner because Something Also of This Nature Could contaminate the whole Compound. Now AS to the Identity Aspect yesterday while Working in The Veterans

LAUNDRY I found or CAME into possesion OF AN ALbuterol INhalation pump THAT hAS DIVISION 2 ON The side of It, it Also hAS AN detAINee ID number AND A NAME The Id NUMber hAPPENS to be 20130709042 The NAME hAPPENS to be DONAld, Smith My NAME is DONAld, A, Smith The MAJority OF The Time i do NOT yse my middle iNITIAl or NAME. My ID NUMber is 20121212065 So THAT MAkes The Time OF his iNCARCerATION either July 9th 2013 or September 7th 2013 which hAS iN either CASE NO ReleDANCE other THAN The SimILARITys iN NAME it does NOT however include a dATe OF birth THAT ALSO being irrelevANT because supposedly iN ONe iNSTANCE i WAS held iN JUVINile holding AT 43 yeARS OF Age. but NEVER MIND My dilemA STARTS hEAR I NEED to iNTRADUCE THIS eVIDENCE before you AND ALSO before my Judge iN This CRIMINAl MATTER AS WELl I ALSO NEED This eVIDENCE FOR TWO ADDITIONAl purposes my SUGGESTION is THAT SOMEONE VISIT ME AND TAKE photos OF This eVIDENCE which CAN be CleARly seeN leAVING ME TWO photos ANDl RETURNING The Rest to you. This NEEDS to OCCUr before my NEXT COURT DATE This MONTH which is 10-30-2012 your ASSISTANCE would be VERY much APPREACIATED however I THINK THAT i SHOULD be RELEASED by THAT dATE iS SO I will TAKE PICTURES MYSELF AND MAKE SURE THAT This eVIDENCE is presented

to you Myself Thank you very much for your Attention And Concideration your Servant Humbly Donald, A, Smith

Detainee ID # No. 20121212065
Date of birth 01-01-57
Institutional Address: P.O. Box 089002 Cook County Jail Chicago, Illinois, 60608
Division: 5 Tier: 1-H

Certificate of Service

I Donald, A, Smith Affirm under penalty of law that i have enclosed 3 pages of description of evidence along with this certificate of service and that everything enclosed is true and correct to the best of my knowlegde - and placed this evidence in the united states mail on the ~~Date of~~: 10-05-13

Signature: Donald, A, Smith

Date of Birth: 01-01-57

Institutional Address: P.O. Box 089002 Cook County Jail Chicago Illinois 60608

Division: 5 Tier: 1-H

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Donald A. Smith (#2012-1212065),	)	
	)	
Plaintiff,	)	Case No. 13 C 5034
	)	
v.	)	
	)	Judge Amy St. Eve
Tom Dart, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

Plaintiff's motion to introduce evidence [#18] is denied, without prejudice. No proof in support of Plaintiff's claims is necessary at this time. Evidence should be submitted in conjunction with a motion (such as a motion for summary judgment), or at trial. Plaintiff is once again reminded of basic filing requirements: (1) litigants must provide the Court with the original plus a judge's copy of every document filed, and (2) every document filed must include a certificate of service showing that a copy was mailed to opposing counsel. In the future, the Court may strike without considering any document filed that fails to comport with these basic filing rules.

Dated: October 16, 2013

AMY J. ST. EVE
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Donald A. Smith (#2012-1212065),	)	
	)	
Plaintiff,	)	Case No. 13 C 5034
	)	
v.	)	
	)	Judge Amy St. Eve
Tom Dart, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

Plaintiff's motion for attorney representation [#6] is denied, without prejudice. Plaintiff is once again reminded that he is required to provide the Court with the original plus a judge's copy of every document filed.

STATEMENT

Plaintiff, an inmate in the custody of the Cook County Department of Corrections, has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that Defendants, correctional officials, have violated Plaintiff's constitutional rights by subjecting him to inhumane conditions of confinement with respect to both his work environment and general living conditions. This matter is before the Court for ruling on Plaintiff's motion for attorney representation.

The motion is denied. There is no constitutional or statutory right to counsel in federal civil cases. *Romanelli v. Suliene*, 615 F.3d 847, 851 (7th Cir. 2010); *see also Johnson v. Doughty*, 433 F.3d 1001, 1006 (7th Cir. 2006). Nevertheless, the Court has discretion under 28 U.S.C. § 1915(e)(1) to recruit counsel for an indigent litigant. *Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864, 866-67 (7th Cir. 2013).

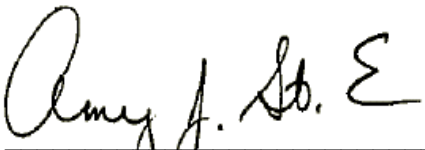
When a *pro se* litigant submits a request for assistance of counsel, the Court must first consider whether the indigent plaintiff has made reasonable attempts to secure counsel on his own. *Navejar v. Iyiola*, 718 F.3d 692, 696 (7th Cir. 2013) (citing *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (en banc)). If so, the Court must examine "whether the difficulty of the case--factually and legally--exceeds the particular plaintiff's capacity as a layperson to coherently present it." *Navejar*, 718 F.3d at 696 (quoting *Pruitt*, 503 F.3d at 655). "The question ... is whether the plaintiff appears competent to litigate his own claims, given their degree of difficulty, and this includes the tasks that normally attend litigation: evidence gathering, preparing and responding to motions and other court filings, and trial." *Pruitt*, 503 F.3d at 655. The Court also considers such factors as the plaintiff's "literacy, communication skills, education level, and litigation experience." *Id.*

After considering the above factors, the Court concludes that the solicitation of counsel is not warranted in this case. Although the complaint sets forth cognizable claims, Plaintiff has alleged no physical or mental disability that might preclude him from adequately investigating the facts giving rise to this lawsuit. Plaintiff, whose submissions to date have been coherent and articulate, appears more than capable of litigating this matter, notwithstanding his incarceration. It should additionally be noted that the Court grants *pro se* litigants wide latitude in the handling of their lawsuits. Therefore, Plaintiff's motion for attorney representation is denied at this time. Should the case proceed to a point that assistance of counsel is appropriate, the Court may revisit this request.

As a final concern, Plaintiff is once again reminded that he is required to provide the Court with the original plus a judge's copy of every document filed. In the future, the Court may strike without considering any document filed that fails to comport with this basic filing rule.

Dated: October 17, 2013

ENTERED



AMY J. ST. EVE
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Donald A. Smith (#2012-1212065),	)	
	)	
Plaintiff,	)	Case No. 13 C 5034
	)	
v.	)	
	)	Judge Amy St. Eve
Tom Dart, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

Defendant's uncontested motion to dismiss the complaint for failure to state a claim [#12] is granted. The complaint is dismissed without prejudice pursuant to Fed. R. Civ. P. 8 and 12(b)(6). Plaintiff is granted until January 3, 2014 to submit an amended complaint curing pleading deficiencies. The Clerk will provide Plaintiff with an amended civil rights complaint form and instructions along with a copy of this order. Failure to submit an amended complaint (and judge's copy) by January 3, 2014 will result in summary dismissal of this case in its entirety.

STATEMENT

Plaintiff, an inmate in the custody of the Cook County Department of Corrections, has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that Defendants, correctional officials, have violated Plaintiff's constitutional rights by subjecting him to inhumane conditions of confinement. This matter is before the Court for ruling on Sheriff Thomas Dart's motion to dismiss the complaint for failure to state a claim. Although granted the opportunity to file an opposing brief, *see* briefing schedule entered October 1, 2013, Plaintiff has not responded to the motion. For the reasons stated in this order, the uncontested motion is granted.

Standards on a Motion to Dismiss

It is well established that courts liberally construe *pro se* complaints. *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1027 (7th Cir. 2013). The courts hold *pro se* submissions to a less stringent standard than formal pleadings drafted by lawyers. *Bridges v. Gilbert*, 557 F.3d 541, 546 (7th Cir. 2009). Rule 8(a)(2) of the Federal Rules of Civil Procedure requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); *Windy City Metal Fabricators & Supply, Inc. v. CIT Tech. Fin. Servs., Inc.*, 536 F.3d 663, 667 (7th Cir. 2008).

When considering whether to dismiss a complaint for failure to state a claim upon which relief can be granted, the Court assumes all factual allegations in the complaint to be true, viewing all facts–as well as any inferences reasonably drawn therefrom–in the light most favorable to Plaintiff. *Bell Atlantic Corp.*, 550 U.S. at 563 (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002)); *Parish v. City of Elkhart*, 614 F.3d 677, 679 (7th Cir. 2010). A well-pleaded complaint may proceed even if it appears "that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Bell Atlantic Corp.*, 550 U.S. at 556.

Nevertheless, the factual allegations in the complaint must be enough to raise a right to relief above the speculative level. *Id.* at 555. While a complaint does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than mere labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. *Bell Atlantic Corp.*, 550 U.S. at 555 (citations omitted). The Court "need not accept as true legal conclusions, or threadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009). "The complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 463 (7th Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Furthermore, a plaintiff can plead himself or herself out of court by pleading facts that undermine the allegations set forth in the complaint. *See, e.g., Whitlock v. Brown*, 596 F.3d 406, 412 (7th Cir. 2010) (citations omitted) ("A judicial admission trumps evidence. This is the basis of the principle that a plaintiff can plead himself out of court").

Facts

Plaintiff alleges the following facts, assumed true for purposes of the motion to dismiss: Plaintiff is a pretrial detainee at the Cook County Jail. Plaintiff is assigned to the jail's Division 5, a special unit that houses and provides jobs for inmates who are U.S. military veterans. Inmates' breakfasts typically consist of milk, cereal, and Kool-Aid. Lunches are often no more than peanut butter sandwiches, cookies, and Kool-Aid; the food is sometimes contaminated by bugs. The water is "filthy." The jail is infested with mice and cockroaches. There are no mirrors for shaving, and there is no outside recreation.[1]

Analysis

Even accepting Plaintiff's factual allegations as true, the Court finds that the complaint fails to give Defendants sufficient notice of the claims against them. Plaintiff must elaborate on his claims; the facts alleged are inadequate to satisfy even basic pleading requirements.

Certainly, incarcerated persons are entitled to confinement under humane conditions that satisfy "basic human needs." *Rice ex rel. Rice v. Correctional Medical Services*, 675 F.3d 650, 664 (7th Cir. 2012) (citations omitted). The jail must house Plaintiff under "humane conditions." *Sain v. Budz*, No. 05 C 6394, 2006 WL 539351, *2 (N.D. Ill. Mar. 3, 2006) (Conlon, J.) (citing *Farmer*

[1]By Order of July 18, 2013, the Court summarily dismissed on preliminary review Plaintiff's additional claims relating to his work environment and salary.

v. Brennan, 511 U.S. 825, 832 (1994)); *see also Henderson v. Sheahan*, 196 F.3d 839, 844 (7th Cir. 1999).

There is no question that inmates have a constitutional right to an adequate diet. *See, e.g., Antonelli v. Sheahan*, 81 F.3d 1422, 1432 (7th Cir. 1996). "The State must provide an inmate with a 'healthy, habitable environment.' This includes providing nutritionally adequate food that is prepared and served under conditions which do not present an immediate danger to the health and well being of the inmates who consume it." *French v. Owens*, 777 F.2d 1250, 1255 (7th Cir. 1985) (citations omitted).

However, the Constitution provides only that inmates receive adequate nutrition. Food that is monotonous, unpalatable, non-tasty, or not aesthetically pleasing does not violate an inmate's civil rights. *McGee v. Monahan*, No. 06 C 3538, 2008 WL 3849917, *8 (N.D. Ill. Aug. 14, 2008) (Zagel, J.) (citations omitted). "The Constitution does not require prison officials to provide the equivalent of hotel accommodations." *United States v. Weathington*, 507 F.3d 1068, 1073 (7th Cir. 2007) (quoting *Lunsford v. Bennett*, 17 F.3d 1574, 1579 (7th Cir. 1994)).

The occasional discovery of a contaminant is insufficient to establish a Fourteenth Amendment violation. *See, e.g., Lieberman v. Budz*, No. 00 C 5662, 2010 WL 369614, *7 (N.D. Ill. Jan. 28, 2010) (Coar, J.), *Barbosa v. McCann*, No. 08 C 5012, 2009 WL 2913488, *3 (N.D. Ill. Sep. 8, 2009) (Pallmeyer, J.); *Knox v. Wainscott*, No. 03 C 1429, 2003 WL 21148973, *8 (N.D. Ill. May 14, 2003) (Manning, J.) (citations omitted). "Even a dead mouse in an inmate's meal is only a minimal deprivation without a showing of injury." *McRoy v. Sheahan*, No. 03 C 4718, 2004 WL 1375527, *3 (N.D. Ill. Jun. 17, 2004) (Brown, Mag. J.) (citing *Miles v. Konvalenka*, 791 F. Supp. 212, 214 (1992) (Norgle, J.)). In a large-scale food operation such as a jail dietary, "oversights such as the presence of crusted food or cigarette ashes on dining room fixtures and utensils on occasion, or even 'foreign objects' in the food can be expected." *Hadley v. Dobucki*, 1995 WL 364225, *3 (7th Cir. May 1, 1995) (unpublished); *see also Franklin v. True*, 76 F.3d 381, *2 (7th Cir. 1996) (citations omitted) (one incident of food poisoning not enough to implicate the Civil Rights Act). Although it is most regrettable that Plaintiff has found insects in his food, he cannot recover damages under 42 U.S.C. § 1983 for an occasional issue. The complaint on file does not suggest that meals served at the jail are nutritionally inadequate or present a substantial danger of harm.

Plaintiff must likewise provide further details concerning his claim that the water is "filthy." Just as correctional officials cannot withhold food, they cannot deprive inmates of drinkable water. *See, e.g., Atkins v. City of Chicago*, 631 F.3d 823, 830 (7th Cir. 2011) (collecting cases). But Plaintiff provides no facts from which one could infer that the jail's water is unsafe to drink.

Similarly, the complaint states that there are mice and cockroaches, but he offers no basis for concluding that the degree of infestation is such as to create a constitutional claim. *Contrast Antonelli v. Sheahan* 81 F.3d 1422, 1431 (7th Cir. 1996) (allegation of sixteen months of infestation and significant physical harm was actionable under 42 U.S.C. § 1983).

With regard to the purported denial of outdoor recreation, "lack of exercise may rise to a constitutional violation [only] in extreme and prolonged situations where movement is denied to the point that the inmate's health is threatened." *Thomas v. Ramos*, 130 F.3d 754, 764 (7th Cir. 1997)

(citations omitted). There is a significant difference between a lack of outdoor recreation and an inability to exercise. Even an inmate confined on lockdown retains the ability to improvise an exercise regimen in his cell.

Finally, the amended complaint must include dates. In order to satisfy the notice pleading requirements of Fed. R. Civ. P. 8(a)(2), a plaintiff must "some indication . . . of time and place." *Thompson v. Washington*, 362 F.3d 969, 971 (7th Cir. 2004). Courts have held that "[t]he length of confinement cannot be ignored in deciding whether the confinement meets constitutional standards." *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978) ("A filthy, overcrowded cell and a diet of 'grue' might be tolerable for a few days and intolerably cruel for weeks or months"); *see also DeSpain v. Uphoff*, 264 F.3d 965, 974 (10th Cir. 2001) ("While no single factor controls the outcome of these cases, the length of exposure to the conditions is often of prime importance"). Plaintiff must provide a time frame for the conditions about which he complains.

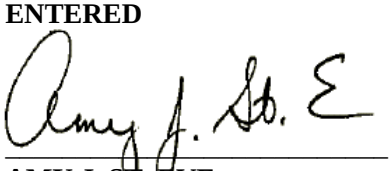
In short, while the Due Process Clause prohibits conditions that amount to "punishment" of a pretrial detainee, *Bell v. Wolfish*, 441 U.S. 520,535 (1979); *Lewis v. Downey*, 581 F.3d 467, 473 (7th Cir. 2009), punishment in the constitutional sense requires something more than routine discomfort. *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981); *Granville v. Dart*, No. 09 C 2070, 2011 WL 892751, *5 (N.D. Ill. Mar. 11, 2011) (Leinenweber, J.). Punishment generally requires allegations of extreme deprivations over an extended period of time. *Hudson v. McMillian*, 503 U.S. 1, 8-9 (1992); *Bell* at 542; *Henderson v. Sheahan*, 196 F.3d 839, 845 (7th Cir. 1999); *Johnson v. Bryant*, No. 11 C 5785, 2011 WL 5118415, *2 (N.D. Ill. Oct. 26, 2011) (Holderman, J.). In the absence of any such allegations, the complaint fails to state a cognizable claim. Plaintiff has failed to state facts indicating that his living conditions, either alone or in their totality, rise to the level of constitutional concern.

For the foregoing reasons, the Court dismisses the complaint on file without prejudice. Plaintiff is granted thirty days in which to submit an amended complaint on the Court's required form. Plaintiff must write both the case number and the judge's name on the amended complaint, sign it, and return it to the Prisoner Correspondent. As with every document filed with the Court, Plaintiff must provide an extra copy for the judge. Plaintiff is cautioned that an amended pleading supersedes the original complaint and must stand complete on its own. Therefore, all allegations against all Defendants must be set forth in the amended complaint, without reference to the original complaint. Any exhibits Plaintiff wants the Court to consider in its threshold review of the amended complaint must be attached, and the judge's copy of the amended complaint must include complete copies of any and all exhibits. Plaintiff is advised to keep a copy for his files.

The Clerk will provide Plaintiff with an amended civil rights complaint form and instructions along with a copy of this order. If Plaintiff fails to comply by January 3, 2014, the case will be summarily dismissed in its entirety.

Dated: December 3, 2013

ENTERED



AMY J. ST. EVE
United States District Court Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JH

FILED
12-11-13
DEC 11 2013 mm
THOMAS G BRUTON
CLERK, U S DISTRICT COURT

DONALD, A, Smith) CASE NO.
PLAINTIFF(S)) 13C 5034
V.)
TOM DART, et al.,) HONORABLE. AMY J. ST. EVE
DEFENDANT(S))

MOTION Clarifing Preivously Cited Complaint About Conditions At Cook County Jail; Pluss Reconcideration of Portion of Same dismissed under The Eigth Amendment

1.) PLAINTIFF. DONALD, A, Smith, HAS been INCARCERated in DIVISION 5 of The Cook County JAIL SINCE 12-12-12 were He Worked in The VETERANS LAUNDERY PROGRAM from 01-15-13 until The DATE of 11-18-13, PLAINTIFF WAS PAID $3.00 per DAY for his employment AS A pre-TRIAL DETAINEE, he WAS Also informed THAT previous DETAINEES received $5.00 per DAY AND WAS informed Shortly before being TRANSFERED AGAINST his wishes THAT, THAT RATE of PAY WAS being restored AND That everyone would receive back pay, which Never occured. That would AMOUNT To more THAN $500.00. The RECONCIDERATION portion is based on The premise THAT INMATES in The JAILS complaints must be concidered under The 14TH AMENDMENT AND NOT The 8TH because DETAINEES AT The JAIL HAVE NOT been CONVICTED of A CRIME. Not only Should I be protected Under The 13TH AS well because my cooperation AS AN employee WAS Achieved by THREAT of PLACEMENT in GENERAL POPULATION AND REMOVAL of priviledges. when my ACTIONS of Civil COMPLAINT became KNOWLEDGEABLE TO Those who ARE IN.

PAGE 1: CONTINUED

Authority I was eventually moved. To Division 11,
2) This Action Stems from My False incarceration on Criminal Charges of Another nature.
3) I've Also been Repeatedly denied Access to The law library both in Division 5 And Division 11
4) Also because of The fact That i've filed This Action Against The Jail i believe Subversive And oppresive Acts are occuring Against my person Through employees At The Jail for The purposes of punishment And hindering My efforts To Strengthen my CASE. There is Another Action on My behalf directed At MISS ALVAREZ And Other desendants for Illegally Detaining me And seizing My property Through unconstitutional means And it would be To her And Others best Advantage to win A decision by Any means Available be it legal or Otherwise.

Signature Donald A. Smith

Certificate of Service

I Donald, A, Smith, Swear under penalty of LAW That All The belowe Stated is True And Correct To The best of my Knowlege, I have previously been given leave to file in Pauperis or forma pauperis And That status has only Changed for The Worst, I Am Now Submiting A Two page motion in support of And Addition to my original Complaint with Corrections Included. I Also have no means or resources to provide Additional Copies to The deSendants And pray The clerk to supply Such And bill Me At A later Date And finaly I Have place These Documents Addressed to The Clerk of The U.S. Court in The U.S. MAil while incarcerated At Chicago's Cook County Jail on The Date of 12-07-[redacted]2013. Detainee ID No.# 2012121 2065 Signature: Donald A Smith Jail Address: P.O. Box 089002 Cook County Jail Chicago IL 60608. CASE NO. 13C 5034 Before The Honorable. Amy J. St. Eve

[redacted]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Donald A. Smith (#2012-1212065),	)	
	)	
Plaintiff,	)	Case No. 13 C 5034
	)	
v.	)	
	)	Judge Amy St. Eve
Tom Dart, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

The Court grants in part and denies in part Plaintiff's motion for clarification and reconsideration [#23]. The Court explains its reasons for dismissing the original complaint below; however, the motion is denied insofar as Plaintiff seeks reconsideration of the Court's dismissal order. On the Court's own motion, Plaintiff is granted an extension of time until January 21, 2014, to submit an amended complaint. The Court reminds Plaintiff that every document filed must include a certificate of service showing that copies were mailed to all opposing counsel of record. The status conference previously scheduled for December 19, 2013, at 8:30 a.m. is vacated and re-set to February 3, 2014 at 8:30 a.m. Defendants' counsel is directed to make arrangements for plaintiff Donald Smith available to appear via telephone for the February 3, 2014 status hearing and should contact the courtroom deputy, 312/435-5879, by January 31, 2014 with the contact information.

STATEMENT

Plaintiff, an inmate in the custody of the Cook County Department of Corrections, has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that Defendants, correctional officials, have violated Plaintiff's constitutional rights by subjecting him to inhumane conditions of confinement.

By Order of December 3, 2013, the Court granted Defendant Dart's uncontested motion to dismiss the complaint for failure to state a claim. However, the Court granted Plaintiff the opportunity to submit an amended complaint containing dates and rectifying other pleading deficiencies.

Plaintiff's motion for clarification is granted. The Court granted Defendant's motion to dismiss because the original complaint failed to state sufficient facts to state a plausible cause of action under the Fourteenth Amendment. As discussed more fully in the Court's prior order, punishment in the constitutional sense requires something more than routine discomfort. *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981); *Granville v. Dart*, No. 09 C 2070, 2011 WL 892751, *5 (N.D. Ill. Mar. 11, 2011) (Leinenweber, J.). Punishment generally requires allegations of egregious

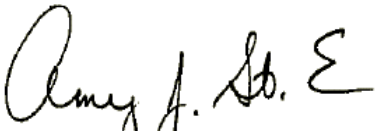
deprivations over an extended period of time. *Hudson v. McMillian*, 503 U.S. 1, 8-9 (1992); *Bell* at 542; *Henderson v. Sheahan*, 196 F.3d 839, 845 (7th Cir. 1999); *Johnson v. Bryant*, No. 11 C 5785, 2011 WL 5118415, *2 (N.D. Ill. Oct. 26, 2011) (Holderman, J.).

If Plaintiff wishes to pursue his claims, he must state facts indicating that the food served at the jail is nutritionally inadequate or presents a substantial danger of harm, that the jail's water is unsafe to drink, that pest infestation is so profound as to rise to the level of a constitutional violation, and that the denial of exercise is extreme and prolonged. Plaintiff must also provide relevant dates. The Court discussed the complaint without prejudice, meaning that Plaintiff has a second chance to state facts to support a 1983 claim.

For the foregoing reasons, the Court grants Plaintiff's motion for clarification; however, the Court denies the motion to the extent that Plaintiff seeks reconsideration of the dismissal order. On the Court's own motion, Plaintiff is granted an extension of time until January 21, 2014, to submit an amended complaint. The Court further advises Plaintiff that he should respond to any motions he opposes rather than filing a motion for reconsideration after the Court rules. Finally, the Court reminds Plaintiff that every document filed must include a certificate of service showing that copies were mailed to all opposing counsel of record. In the future, the Court may strike without considering any document filed that fails to comport with this basic filing rule.

Dated: December 16, 2013

ENTERED



AMY J. ST. EVE
United States District Court Judge

IN THE UNITED STATES District Courts of THE NORTHERN DISTRICT OF ILLINOIS

FILED MA

DEC 30 2013

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

DONALD, A, Smith (2012-1212065)
Plaintiff
V.
TOM DART, et al.,
Defendants

CASE NO. 13C 5034

Judge Amy St. Eve
Presiding Judge

Amended Motion in Support of Original Complaint

Defendant DONALD, A, Smith Moves This Court

1.) ON December 10th 2012 Defendant WAS Arrested but it WAS NOT UNTIL December 12th THAT defendant WAS processed into The CHICAGO Cook County JAIL. At which time he WAS Subjected to The previously MENTIONED VIOLATIONS OF his CONSTITUTIONAL Rights per The Fourtheenth Amendment but NOT limited to THAT Amendment or Article ALONE.

2.) The belowe under cited has existed AND CONTINUES to exist within The CONFINES OF CHICAGO's Cook County JAIL.

3.) Some resent decisions are MAYORAL V. SHEAHAN, 245, F. 3d 934 (7th Cir. 2001);

PAGE 1 CONTINUED

HALL V. SHEAHAN, 2001 WL 111019 (N.D Ill. 2001); MAY V. SHEAHAN, 226 F. 3d 876 (7th Cir. 2000); AND ANTONELLI V. SHEAHAN, 81 F. 3d. 1422 (7th Cir. 1996) These CASES Should be reviewed because most of These conditions still exist AND have in FACT worsend.

4.) AS FAR AS The WATER is CONCERNED The County has Still NOT Addressed This problem AS Cited by The CHICAGO TRIBUNE IN CASES Such AS BANKS V. COOK County et al., NO. 12C2341, UNITED STATES District Court NORTHERN District ILLINOIS, EASTERN DIVISION U.S.D.C. eg CALERO-TOLEDO V. PEARSON YACHT LEASING CO. 416 U.S. 663 680-83 (1974 see Also Chisholm V. Georgia 2 U.S. 419, 471-72 (1793)
BANKS V. DART 07C 2928
09C 2071
12C 5726
13C 1014
07C 47 N.D. Ill
HTTP: // W.W.W. EPA. State. il. U.S. WATER (federal frauds act / what program does) MICHEAL HAWTHORNE odd CHEMICALS TURN UP IN drinking WATER AUGUST 6TH 2011 CHICAGO TRIBUNE CHICAGO WATER CONTAMINATED CHICAGO TRIBUNE AUGUST 9TH 2011 CHICAGO DRINKING WATER SHOWS High levels of Toxic METAL W.W.W. FAIR

PAGE 2

WARNING.org: Radio Activity Gross Alpha, Radio Activity Gross beta, Cyanide, it The water Also contains sex drugs and lead. The powers in Authority Are fully aware of This yet detainees Are still exposed to This danger while The C.O's bring in bottled water and do not drink any water At County Jail filtered or otherwise.

5.) The United States Constitution Guarantees This, That i Am equally protected under law not only under The 14th Amendment but All relevent Articles And Amendments And sections under both The United States Constitution And The Illinois State Constitution AS well supported by The The United States Constitutions Article VI(6) The Supremacy Clause.

6.) Not only CAN My Complaints be verified of Themselves by investigation which i'm not Allowed to preform, but which The Department of Justice has done so itself. but to such AN extent That Thier inspections Are of A Nature That County employees Are Aware of pending inspections weeks if not months in Advance. And Also no other or outside Agency or Authority is Allowed inside Citing

Security Concerns but These problems Still exist And They exist with deliberate indifference or They would have been Addressed years Ago.

2) The County CAN Train New Cadetts And Hire New employees, but CAN Not Handle responcibility which it took Apon itself by incarcerating An individual, The conditions of Consinement Are unconstitutional, Illegal, deplorible And for The most part Intentional Though These conditions were not intended At Thier inception They do exist And need be Addressed And so it is with great respect And Humility That I pray That This Amended And All previously Stated Transgressions Against my person by The County my motion be granted with Relief As soon As possible

your Humble Servant
Donald A. Smith

Page 4 And end of motion

ADDENDUM to Motion in Support of original Complaint And in Support of Amended Motion

1) The defendant or Complaintant myself Also Asserts That The defendant myself HAS Continually lived under These Conditions to This date And Am Still Subject to Such Conditions. That being in excess of more THAN ONE year with very little Change for The better due to Transfer from division 5 to division 11 Though polluted water is Still A major problem Also I Assirm That i've only been housed in division 11 Approximately 1 AND A HALF months going on TWO months

2) I Am Still fearful of retalitory Action Against My person for This existing Civil Complaint

3) There's Also in existance A 92 page study That CAN be Accessed online which WAS done by The department of Justice on Chicago's Cook County Jails Short Comings which Still exist.

Donald A. Smith

Certificate of Service

I, Donald, A, Smith, Swear under penalty of law that I have severed A Copy of The Attached document Consisting of A 5 page Amended Motion in Support of Original Complaint on All desendants listed in Complaint including Anita Alverez The States Attorney of The State of Illinois And The Sheriff of The Cook County Jail Tom Dart. And That I have placed These Copies of Documents Addressed to Each including The Original Addressed to The U.S. Clerk of The Court in C/o Judge. Amy St. Eve CASE NO. 13C 5034 on The Date of 12-24-13, in The US Mail While incarcerated in The Chicago Cook County Jail

Donald A Smith

Self Notorary

Pursuant to 735 ILCS 5/1-109

I Donald, A, Smith, Swear to under penalty And Perjury pursuant to 735 ILCS 5/1-109 That The Statements set forth in The inclosed Are True And Correct This 24th Day of December 2013

Donald, A, Smith

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1
Eastern Division

Donald A. Smith

Plaintiff,

v.

Case No.: 1:13–cv–05034
Honorable Amy J. St. Eve

Tom Dart, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, January 7, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Plaintiff's amended motion in support of original complaint [25] is denied. First, a party ordinarily gets "one shot" at asking the district court to reconsider a ruling. Andrews v. E.I. Du Pont Nemours and Company, 447 F.3d 510, 516 (7th Cir. 2006). By Order of December 16, 2013, the Court denied Plaintiff's first motion for clarification and reconsideration. Second, if Plaintiff opposes motions, then he should file a response within the time allotted rather than waiting until the Court has ruled and then filing motions to reconsider.Motion [25] is deniedMailed notice(kef,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Donald A. Smith (#2012-1212065),	)	
	)	
Plaintiff,	)	Case No. 13 C 5034
	)	
v.	)	
	)	Judge Amy St. Eve
Tom Dart, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

By Order of December 3, 2013, the Court granted Defendant's motion to dismiss but granted Plaintiff the opportunity to submit an amended complaint curing pleading deficiencies. The Court warned Plaintiff that failure to amend would result in summary dismissal of this case in its entirety. Despite the admonition--and being granted an extension of time in which to do so--Plaintiff has failed to submit an amended complaint as directed. Accordingly, the case is terminated pursuant to Fed. R. Civ. P. 41(b). The status hearing previously scheduled for February 3, 2014, at 8:30 is vacated.

Date: January 27, 2014

AMY J. STEVE
United States District Court

Chapter 11 Part Two

1-11 Illinois Criminal Defense Motions § 11.06

FILED
JAN 24 2014
THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

§ 11.06 --- Notice of Appeal

Form 11.06 Notice of Appeal

No. of Appellate Case Number

IN The Appellate Court of Illinois

Northern District, Eastern Division

Donald, A, Smith
Plaintiff-Appellee
v.
Tom Dart, et al.
Defendant-Appellant(s)

Appeal from The United States District Court for The Eastern Division, Northern District case No. 13C5034
Honorable. Amy J. St. Eve.
Judge Presiding.
Magistrate Judge Jeffrey Cole

Notice of Appeal

I, Donald, A, Smith, The Plaintiff-Appellee in The Above-Captioned and Numbered Case, gives Notice That an Appeal is Taken from The Order of Judgement described as follows:

1) Court to which appeal is Taken

2) Name of Appellant(s) And Address to which Notices Shall be Sent, Sheriff Tom Dart Cook County Sheriff 50 W Washington Suite 704 Chicago Illinois 60602, Anita Alvarez Cook County States Attorney 500 Richard J. Daley Center Chicago Illinois 60602

(Page 1)

3) NAME And Address of Appellant's Attorney on Appeal
ANITA ALVAREZ States Attorney 500 Richard J DAley Center
Chicago Illinois 60602
4) Date of Judgement or order 01-03-14

5) Offense of which Convicted None

6) Sentence None

7) (if Appeal is not taken from A Conviction, State The Nature of The Order Appealed from) Dismissal of AN Civil Complaint. Supposedly delequent in Correction of original Complaint & Violating Time limitations for Such.
Respectfully Submitted Donald A Smith
Pro-Se Litigant.
Attorney's NAme
NAme of Law Firm
Address
Telephone Number
Attorney No:

(Page 2)

Addendum to Motion of Appeal And Notice of Motion

1) Amended Complaint WAS MAiled with Certificate of Service in Compliance with instructions two weeks Prior to dead line for dismissal, Although Amendment WAS Not on Supplied Form.

2) The County JAil hAS reASontly tAKen Action To Correct These ConSTitutionAl VioLAtions of LAW by Closing CertAin DiVisions And ChANging The JAils MeAue Although for The Most pART These VioLAtions still exist And I Still Suffer to Some degree AS StAted From 12-12-12 to Present DAte.

3) AS I'le preciously stAted Some retAliAtion or other forms blocking litigAtion by MeAns of Some United States delAy of MAil Not by That OSSice itSelS MAy hAVe occured. INtentionAlly or otherwise

4) The ChArges That i'm ChArged with in My PendinG CriminAl MATter in Some WAYS relAted Are pART of Civil MATTer or ComplAint becAuse Not only Are my #14 Amendment rights but Also other rights Are being violAted AS well AS follows on Next PAge

(PAge 3)

The County has in some way Affected or violated My Constitutional rights by incarceration of my person in different degrees but none the less still violations under; United States Constitution, Article I sections 9 & 10, Article IV section 2, Article VI, Article VII Amendments I, II, IV, V, VI, VII, VIII, IX, X, XI, XIII section 1, XIV Section 1 and XV Section 1, The Illinois Constitution Article I sections 1-That-12, 16, 20, 22 minus an unconstitutional sentence in 22, 23 and 24. And Article 3 section 1 That would be 35 violations of Constitutional Law both Federal and State but i am only concerned with those conditions of confinement in this Litigation. My other contentions are being addressed in two different Courts That this matter now being Tried it is complicated but plainly evident. That an Appeal should be granted and a decision found in my favor. I also beleive That the dismissal of my original complaint should be throughly investigated As with my entire situation.

Humbly And Respectfully

Donald A Smith

(PAGE 4)

Certificate of Service

The Undersigned, defendant, myself Donald A Smith Certify That I caused A True And Correct Copy of Notice of motion of Appeal And Affidavit in Support of both to be Served on Those persons listed belowe by U.S. Mail while incarcerated in Chicago Cook County Jail And That I placed same on the Day of 22nd Month of 1st And year of 2014

Cook County Sheriff Tom Dart
50 West Washington Suite 704
Chicago, IL, 60602

Anita Alvarez States Attorney
500 Richard J. Daley Center
Chicago, IL, 60602

Office of The Clerk of The U.S. District Court
United States Court House
219 South Dearborn Street
Chicago Illinois 60604

Signed: Donald A Smith

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Donald A. Smith (#2012-1212065),	)	
	)	
Plaintiff,	)	Case No. 13 C 5034
	)	
v.	)	
	)	Judge Amy St. Eve
Tom Dart, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

Plaintiff's motion for leave to appeal *in forma pauperis* [#35] is denied. The Court certifies that the appeal is not taken in good faith and orders Plaintiff to pay the appellate fees of $505 within fourteen days or the Court of Appeals may dismiss his appeal for want of prosecution. The Clerk is directed to send a copy of this order to the PLRA Attorney, U.S. Court of Appeals for the Seventh Circuit.

STATEMENT

Plaintiff, an inmate in the custody of the Cook County Department of Corrections, has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that Defendants, correctional officials, have violated Plaintiff's constitutional rights by subjecting him to inhumane living conditions.

By Order of July 18, 2013, the Court summarily dismissed on preliminary review Plaintiff's claims that he received inadequate wages and that his working conditions were unconstitutional. In September 2013, Defendant Dart filed a motion to dismiss the complaint's remaining count for failure to state a claim. Although granted three months to respond to the motion, Plaintiff never filed an opposing brief. Consequently, on December 3, 2013, the Court granted Defendant's uncontested motion to dismiss. However, the Court gave Plaintiff the opportunity to submit an amended complaint curing pleading deficiencies.

After the Court denied Plaintiff's ensuing motions for reconsideration, he filed an interlocutory notice of appeal without seeking leave of Court to do so. The notice of appeal crossed in docketing with the Court's dismissal of this case in its entirety in view of Plaintiff's failure to submit an amended complaint, as directed. *See* Order of January 27, 2014.

The Court denies Plaintiff's motion for leave to appeal *in forma pauperis*. For the reasons discussed in the Court's Orders of December 3, 2013, December 16, 2013, and January 7, 2014, the Court finds that this action does not raise a substantial issue meriting appellate review. The Court

accordingly certifies, pursuant to 28 U.S.C. § 1915(a)(3), that the appeal is not in good faith and that no appeal should be taken.

Under the rules of the U.S. Court of Appeals for the Seventh Circuit, if the district court certifies that an appeal is not taken in good faith, the appellant cannot prosecute the appeal *in forma pauperis* but rather must pay the appellate fees in full for the appeal to go forward. Consequently, Plaintiff must pay the full $505 within fourteen days or the Court of Appeals may dismiss his appeal for want of prosecution. *See Evans v. Illinois Dept. of Corrections*, 150 F.3d 810, 812 (7th Cir. 1998). If Plaintiff wishes to contest this Court's finding that the appeal is not taken in good faith, he must file a motion with the Court of Appeals seeking review of this Court's certification within thirty days of service of this order. *See* Fed. R. App. P. 24(a)(5).

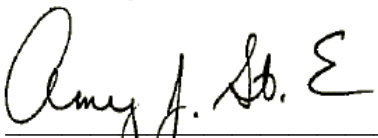
In sum, Plaintiff's motion for leave to appeal *in forma pauperis* is denied. Plaintiff is ordered to remit to the Clerk of the Court the $505 appellate fee within fourteen days of the date of this order. If Plaintiff fails to comply with this order, the Court of Appeals may dismiss his appeal. Plaintiff is responsible for ensuring payment of the filing fees as directed by this order, and should ensure that the institution having custody of him transmits the necessary funds. Nonpayment for any reason other than destitution shall be construed as a voluntary relinquishment of the right to file future suits *in forma pauperis*. The obligation to ensure full payment of the filing fees imposed by this order shall not be relieved by release or transfer to another prison. Plaintiff is under a continuing obligation to inform the Clerk of this Court in writing of any change of address within seven days.

Payment shall be sent to the Clerk, United States District Court, 219 S. Dearborn St., Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor. Payment should clearly identify Plaintiff's name, as well as the district Court and appellate Court case numbers assigned to this action.

The Clerk is directed to send a copy of this order to the PLRA Attorney, United States Court of Appeals for the Seventh Circuit.

Dated: February 14, 2014

ENTERED



AMY J. ST. EVE
United States District Court Judge

Appendix 46:
How the District Court Construed the Filings Below

Title of Pleading	Substance of Pleading	District Court's Ruling
Defendants' "Motion to Dismiss Pursuant to Fed. R. Civ. Pro. 12(b)(6)" (R.12.)	Defendants argue the claims are **factually insufficient** because they are not specific enough to place Defendants on notice. (R.12.)	The claims were **legally insufficient** given the high standards applied to conditions-of-confinement claims. (R.21.)
Smith's October 7, 2013 Letter "In Support of Original Complaint" (R.17.)	Mr. Smith adds specific details regarding alleged pest infestation, substandard nutritional value of the food, toxicity of the water, and exposure to mold in cells. "I've been incarcerated here nearly 10 months." (R.17.)	Did not address; treated Defendants' motion as "uncontested." (R.21.)
Smith's October 9, 2013 "Additional Request to Intraduce Evidence" (R.18.)	Mr. Smith describes the medical conditions he has developed as a result of the conditions of confinement alleged. (R.18.)	No **evidence** may be submitted at this point in the process. (R.21.)
Smith's December 11, 2013 "Motion Clarifing Preivously Cited Complaint about Conditions at Cook County Jail; Pluss Reconcideration of Portion of Same Dismissed Under the Eighth Amendment" (R.23.)	Mr. Smith seeks to clarify his earlier complaint by setting forth specific dates and durations (he arrived in Division Five on 12/12/12, his laundry job began 1/15/13, and he stopped working that job on 11/18/13), and asks that the court reconsider his complaint in light of these additional facts. (R.23.)	Grants in part and denies in part Plaintiff's motion for clarification and reconsideration. The court clarifies that it granted the motion to dismiss because he had "failed to state sufficient facts to state a plausible cause of action" because "punishment in the constitutional sense requires something more than routine discomfort." (R.24.)
Smith's December 24, 2013 "Amended Motion in Support of Original Complaint" (R.25.)	Incorporates all "previously mentioned violations of his constitutional rights" and adds detail, including the dates and duration of the alleged violations, and the extreme nature of the violations (especially with regard to the "toxic" drinking water and deplorable conditions of confinement). (R.25.)	Denies "Plaintiff's amended motion in support of original complaint" because a party ordinarily gets "one shot" at a motion to reconsider. (R26.)

No. 14-1169

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DONALD A. SMITH, Plaintiff–Appellant, v. TOM DART, et al., Defendants–Appellees.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division Case No. 1:13-cv-05034 The Honorable Amy J. St. Eve

Circuit Rule 30(d) Statement

I, the undersigned, counsel for the Plaintiff–Appellant, Donald A. Smith, hereby state that all of the materials required by Circuit Rules 30(a), 30(b), and 30(d) are included in the Appendix to this brief.

/s/ Sarah O'Rourke Schrup
Attorney
Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: November 25, 2014

Certificate of Service

I, the undersigned, counsel for the Plaintiff-Appellant, Donald A. Smith, hereby certify that I electronically filed this brief and appendix with the clerk of the Seventh Circuit Court of Appeals on November 25, 2014, which will send the filing to counsel of record in the case.

/s/ Sarah O'Rourke Schrup
Attorney
Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611
Phone: (312) 503-0063

Dated: November 25, 2014