IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

ERIC MATTHEW NEGRIN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**No. 5:21-CV-00269-MTT-CHW**
	:	
Captain BUSTER KING, *et al.*,	:	**Proceedings Under 42 U.S.C. § 1983**
	:	**Before the U.S. Magistrate Judge**
	:	
Defendants.	:	
	:	

ORDER AND RECOMMENDATION

Before the Court are Defendants' motions for summary judgment and Plaintiff's motion for appointment of counsel. (Docs. 52; 54; 61). Plaintiff did not respond to the motions for summary judgment.[1] As discussed below, the undisputed facts show that Defendants were not deliberately indifferent to Plaintiff's serious medical need or safety. For that reason, it is **RECOMMENDED** that the Defendants' motions for summary judgment (Docs. 52; 54) be **GRANTED.** Plaintiff's motions for appointment of counsel (Docs. 58; 61) are **DENIED.**

BACKGROUND

Plaintiff filed a complaint alleging that Defendants and other prison officials were deliberately indifferent to his medical needs and safety and that he experienced retaliation from the named defendants for filing lawsuits against them on July 30, 2021. (Doc. 1). After an initial frivolity review under 28 U.S.C. § 1915(e) and § 1915(A), the Court issued an Order and Recommendation that Plaintiff's medical treatment and retaliation claims against Defendant

[1] Plaintiff submitted a filing titled "Response to Summary Judgment," but substantively, this filing amounts to a motion for appointment of counsel. (Doc. 58). Plaintiff's requests for counsel are addressed below.

Howell proceed for further factual development. (Doc. 5). After Plaintiff objected to the portion of the Recommendation that recommended claims against other defendants be dismissed, the Court ordered Plaintiff to supplement his complaint. (Doc. 14). Upon review of Plaintiff's supplemental complaint, the Court ordered that Plaintiff's deliberate indifference and retaliation claims proceed against Defendants King, Marcus, Adside, Ford, and Graham and that Plaintiff's newly asserted conditions of confinements proceed against all Defendants. Defendants Howell and Graham submitted a motion to dismiss or consolidate cases on May 3, 2022, which the Court denied on September 30, 2022. (Docs. 30; 51). Defendants King, Marcus, Adside and Ford collectively filed a motion for summary judgment on December 15, 2022, as did Defendants Howell and Graham. (Docs. 54; 52).

SUMMARY JUDGMENT STANDARD

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The party moving for summary judgment bears the burden of informing the Court of the basis for its motion, and of citing "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that support summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–24 (1986). In resolving motions for summary judgment, the Court must view the evidence in the light most favorable to the non-moving party. *Tolan v. Cotton*, 134 S.Ct. 1861, 1866 (2014).

Although Plaintiff failed to respond to the Defendants' motions for summary judgment, summary judgment is not properly awarded by default. S*ee Trs. of Central Pension Fund of Int'l Union of Operating Eng'rs and Participating Emp'rs*, 374 F.3d 1035, 1039 (11th Cir. 2004). Nevertheless, by failing to respond to the Defendants' motions, Plaintiff has failed to rebut the

Defendants' statement of undisputed material facts, triggering consequences under both the Federal Rules of Civil Procedure and this Court's Local Rules.

Federal Rule of Civil Procedure 56(e)(2) provides that if a party "fails to properly address another party's assertion of fact as required by Rule 56(c)," then the Court may "consider the fact undisputed for purposes of the motion." Rule 56(e)(2). This Court's Local Rule 56 similarly provides: "All material facts contained in the movant's statement which are not specifically controverted by specific citation to particular parts of materials in the record shall be deemed to have been admitted, unless otherwise inappropriate." MDGA Local Rule 56. Finally, Federal Rule of Civil Procedure 56(e)(3) provides that the Court may "grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to" summary judgment. Rule 56(e)(3). *See also Urdaneta v. Wells Fargo Bank, N.A.*, 734 F. App'x 701, 704 (11th Cir. 2018). Accordingly, because Defendants properly supported their factual assertions with specific citations to the record, and because Plaintiff failed to respond, the Defendants' facts may be accepted by the Court as undisputed.[2]

RELEVANT FACTS

Plaintiff entered Wilkinson County Jail ("WCJ") as a pretrial detainee on June 10, 2021, was released on June 28, 2021, reentered WCJ as a pretrial detainee on July 5, 2021, and transferred to Jackson State Prison on November 23, 2021. (Doc. 52-1 ¶ 7). Plaintiff's remaining claims in this case are against Defendants King, Marcus, Adside, Ford, Howell, and Graham. Defendant King is a captain with the Wilkinson County Sheriff's Office and serves as

[2] Nevertheless, this Recommendation is based on a review of the entire record of the case. If evidence in the record shows that a fact is disputed, all justifiable inferences are drawn in Negrin's favor for purposes of summary judgment. *See United States v. One Piece of Real Property Located at 5800 SW 74th Ave., Miami, Fla.*, 363 F.3d 1099, 1101 (11th Cir. 2004) ("the entry of summary judgment [cannot be based] on the mere fact that the motion was unopposed, but, rather, must consider the merits of the motion").

Jail Administrator. (Doc. 54-2 ¶ 2). Defendant King is responsible for overseeing the welfare of inmates incarcerated at WCJ. (*Id.* ¶ 2). Defendants Marcus, Adside, and Ford are deputies and jailers at WCJ who are Defendant King's direct subordinates. Southern Health Partners ("Southern Health") is a company that provides medical services to the inmates at various county jails. (Doc. 52-1 ¶ 1). WCJ contracted with Southern Health to provide medical care to its inmates during the timeframe relevant to Plaintiff's allegations. (*Id.* ¶ 2). Southern Health employed Defendant Howell as a Medical Team Administrator, a position in which she provided nursing care to inmates at WCJ. (*Id.* ¶ 3). Southern Health also employed Defendant Graham, a medical doctor, as Medical Director at WCJ during the relevant time period. (*Id.* ¶ 7).

According to the supplemented complaint, Plaintiff slipped and fell while walking around the WCJ recreation yard on June 20, 2021. (Doc. 15 at 1). Plaintiff describes the area of the recreation yard where he fell as "extremely dangerous," with a "12-inch drop in the pitch from the outer walking area to the center of the [recreation] area where there is an extremely large drain." (*Id.* at 5). This area is "a hazard to all that use the area," and Plaintiff doubts that it could pass proper building inspections. In addition to the grading and draining issues, Plaintiff describes the area as painted with an "extremely high gloss, oil based paint in and on the concrete surface of this recreation area" with "a lot of black mold in this area, due to broken rain gutters and spouts that pour into the area," which "also causes the surface to be very slippery." (*Id.* at 5-6). Plaintiff alleges he saw more than four people become "severely hurt because they slipped and fell in this recreation area," and "at least three [people] including [Plaintiff suffered injuries] severe enough to warrant a visit to the local emergency room." (*Id.* at 6). Plaintiff claims that his fall in the WCJ recreation yard caused "new and severe damage to [his] lower back" and "also aggravated [his] existing upper back and neck injury." (*Id.*) After Plaintiff's

fall, he was denied "proper and prescribed non-narcotic pain medications" for approximately six weeks. (*Id.*)

Plaintiff claims that each defendant knew of his new injury and that each defendant became aware of his preexisting injuries through the course of the treatment of his new injury. (*Id.*) Plaintiff continued to complain of severe back pain for eight weeks following his fall and eventually "talked Captain King into setting me up for an MRI test" to evaluate the severity of his injuries. (*Id.* at 2). Plaintiff had to request to review his own medical records because "Dr. Graham and Nurse Howell refused to show me and explain to me the results." (*Id.*) After the MRI, Plaintiff was "completely denied further medical treatment for this injury." (*Id.*)

Plaintiff also claims he was locked out of his cell and forced to sit on a 10-inch diameter steel stool or on the concrete floor for approximately twelve hours a day. (*Id.* at 3). Plaintiff repeatedly asked Defendants Howell and Graham to issue him a "medical profile" that would allow him to lie down as needed during the day. (*Id.* at 3). Despite complaining of severe pain related to sitting, standing, or walking for any length of time, Plaintiff claims he was denied access to his bunk and denied the ability to sit on a blanket while locked out of his cell by the defendant officers. Plaintiff wrote numerous medical and jail grievances about this issue, which were ignored by the defendants. (*Id.* at 4).

Because of the alleged denial of treatment, Plaintiff claims that other doctors at his current facility have told him that his condition has gotten severely worse because of degenerative arthritis and disc disease in Plaintiff's spine and hips. (*Id.* at 3). Plaintiff has been ordered to go to physical therapy and has been told by a prison doctor that he will need surgery eventually. (*Id.*) Plaintiff also claims that the denial of treatment and the refusal to accommodate his requests to remain in his cell or otherwise make himself comfortable with a

blanket were in retaliation for his previous § 1983 lawsuits against Southern Health and the Twiggs County Sheriff Department, as well as for other lawsuits filed against WCJ. (*Id.* at 4).

Plaintiff's allegations differ significantly from Defendants' statements of fact and the rest of the record. Defendant King testifies by affidavit that after Plaintiff reported falling on June 22, Defendant King reviewed surveillance video from the time of Plaintiff's fall on June 20. (Doc. 54-2 ¶ 10).[3] Defendant King testifies that the video showed Plaintiff fall, get back up, and continue walking. (*Id.*) Plaintiff did not appear to be injured after the fall. (*Id.*) On June 24, 2021, Defendant King took Plaintiff to the emergency room at Navicent Health Baldwin for examination. (*Id.* ¶ 11). After this trip to the emergency room, Plaintiff was treated by Defendants Howell and Graham. (*Id.* ¶ 12). Defendant King, Marcus, Adside, and Ford were not present for Plaintiff's subsequent treatment or consultations with medical staff. (*Id.*) Additionally, Defendant King did not confer with Defendants Howell or Graham about the severity of Plaintiff's injuries. Defendant King claims that his personal observations of Plaintiff at WCJ were inconsistent with Plaintiff's complaints of severe pain—Defendant King saw Plaintiff in person and on the jail's surveillance video exercising, walking normally, and interacting with other inmates during the period that Plaintiff claimed to be in severe pain. (*Id.*)

Defendant King states that area where Plaintiff allegedly fell in the WCJ recreation yard is a restricted area where inmates are not permitted. (*Id.* ¶ 16). King's description of the recreation yard also differs from the description of the yard that Plaintiff gave in his allegations. Defendant King describes the area in question as made of concrete, graded on a slight slope for

[3] The alleged video is not in the record, and Defendants have offered no explanation for the omission. The omission or destruction of this video evidence – evidence that concerns a matter that was the subject of an inmate grievance at the time Defendant King allegedly viewed it – significantly reduces the credibility of Defendant King's testimony about its content, but this testimony is corroborated by other, substantial evidence, notably from Plaintiff's medical records.

drainage, and free of any mold or other substance that might cause the surface of the concrete to be slippery. (*Id.* ¶ 17). Defendants King, Marcus, Adside, Ford, and other jail staff regularly walk in this area. (*Id.*) To Defendant King's knowledge, no inmate has ever received medical care for slipping and falling in the yard, other than Plaintiff. Because of his position and responsibilities, Defendant King would have been aware if any such falls had been reported or if any inmate had sought such treatment. (*Id.*)

Defendant King also contradicts Plaintiff's claims about WCJ's policies regarding time in cells and his ability to rest comfortably during the day. According to Defendant King, the WCJ does not allow inmates to remain in their cells between 8:00 A.M. and 4:30 P.M., to "prevent the inmates from sleeping all day and staying up all night." (*Id.* ¶ 20). During the day, inmates are provided with areas to sit and engage in activities, access to bathrooms, and an hour outside daily. (*Id.*) Inmates with medical passes from a physician are allowed to remain in their cells. (*Id.*) Plaintiff never received a medical pass and was therefore required to abide by the typical jail restrictions. Plaintiff was allowed to remove his blanket from his cell to use as a cushion or to lie down somewhere outside of his cell. (*Id.*) Defendant King denies that Plaintiff was ever required to sit on a 10-inch diameter stool or concrete floor for twelve hours per day. (*Id.*)

Defendants Howell and Graham's statements of fact and Plaintiff's medical history also differ from the account he related in his allegations. During his intake screening on June 11, 2023, Plaintiff reported left-side numbness and neck and back injuries that included herniated discs. (Doc. 52-1 ¶ 9). Over the course of Plaintiff's incarceration at WCJ, Plaintiff submitted a large number of medical complaints or sick calls regarding a variety of issues, including high blood pressure, neck and back injuries, kidney concerns, toothaches, and mental health concerns. (*Id.* ¶ 8). The record reflects that Plaintiff received medical attention after each of these

complaints. (*Id.* ¶ 9). On June 18, 2021, Plaintiff submitted a sick call request reporting a back and neck injury that he claimed to have had for a year prior. (*Id.* ¶ 11). On June 20, 2021, Plaintiff submitted another sick call request reporting severe back and neck pain, advising that Southern Health had records of his existing neck injuries from his time in Twiggs County Jail[4] and requesting extra bedding. (*Id.* ¶ 12).

On June 22 and 23, 2021, Plaintiff submitted sick call requests alleging back and neck injuries that he claimed he sustained by falling in the recreation yard of WCJ on June 20, 2021. (*Id.* ¶ 15). Plaintiff was treated for a back contusion at the emergency room of Navicent Health Baldwin, prescribed 800 mg of Ibuprofen, and given a recommendation that he alternate Tylenol and Motrin as needed for pain. (*Id.* ¶ 16). Defendant Howell examined Plaintiff again on June 25, 2021, and on June 26, 2021, Defendant Graham ordered that Plaintiff take Tizanidine (a muscle relaxant) and Meloxicam (a non-steroidal anti-inflammatory drug) daily. (*Id.* ¶ 18). Plaintiff was released from WCJ on June 28, 2021. (*Id.* ¶ 19).

Plaintiff reentered WCJ a week later, on July 5, 2021, and Nurse Howell conducted Plaintiff's intake medical screening on July 6, 2021. (*Id.* ¶ 20). Plaintiff was covered in scratches and ticks during his medical screening and reported that he had been lost in the woods before he returned to WCJ. (*Id.* ¶ 21). Because Plaintiff complained of back and kidney pain, Defendant Howell administered a urine dip test, which revealed a urinary tract infection. (*Id.* ¶¶ 22-23). Plaintiff also had a history of high blood pressure and back pain. Defendant Graham ordered that Plaintiff be prescribed an antibiotic, Lisinopril (a blood pressure medication), and more Tizanidine and Meloxicam. (*Id.*) On July 12 and 16, 2021, Plaintiff submitted more sick call requests that complained of hip and back pain and urinary issues. (*Id.* ¶ 24). Defendant

[4] The injuries Plaintiff allegedly sustained at Twiggs County Jail were the subject one of Plaintiff's previous lawsuits. *See Negrin v. Gary*, No. 5:20-cv-428-TES-CHW (M.D. Ga. Nov. 6, 2020).

Howell examined Plaintiff on July 19, 2021. (*Id.* ¶ 25). Based on Defendant Howell's examination and the results of a urine dip that revealed a urinary tract infection, Defendant Graham ordered another antibiotic for Plaintiff, which he took between July 21 and July 26, 2021. (*Id.* ¶ 26). Defendant Howell examined Plaintiff again on July 21, 2021, after he again complained of back pain. (*Id.* ¶ 27). Defendant Graham ordered larger doses of Ibuprofen and Tylenol for Plaintiff. (*Id.* ¶ 28). During their examinations, Defendants Howell and Graham noted repeatedly that Plaintiff was actively moving around during his appointments, even getting down on one knee to ask for medications in one instance. (*Id.* ¶¶ 25, 27, 49).

Plaintiff submitted three sick calls between July 26 and July 28, 2021, complaining of severe pain in his back, neck, down both arms, and fingertips. (*Id.* ¶ 29). Defendant Graham examined Plaintiff on July 29, 2021, and prescribed Gabapentin, Zanaflex, and Cymbalta in addition to a urine culture and urology referral. (*Id.* ¶ 30). From July 24 through August 5, 2021, Plaintiff refused to take his Meloxicam. (*Id.* ¶ 31). On August 2, 2021, Plaintiff submitted a sick call related to upper and lower back discomfort. (*Id.* ¶ 32). Defendant Howell examined him on August 4, 2021. (*Id.*) After consulting with Defendant Graham, Defendant Howell entered an order for a MRI of Plaintiff's cervical, thoracic, and lumbar spine based on a prior diagnosis of degenerative disease of the cervical and lumbar spine with neck and back pain. (*Id.* ¶ 33). These MRIs were taken on August 11, 2021, and were reviewed by Defendant Graham. (*Id.* ¶ 36). The August 11, 2021 MRI findings were consistent with Plaintiff's medical records from East Georgia Healthcare Center from February 11, March 25, and May 17 of 2021, prior to Plaintiff's incarceration at WCJ. (*Id.* 39). On August 12, 2021, Defendants Graham and Howell discussed Plaintiff's MRI results, and Defendant Graham advised Defendant Howell that Plaintiff's conditions did not require bed access, special privileges, or surgery. (*Id.* ¶ 40).

Plaintiff complained on August 13, 2021, that his medications were not successfully managing his pain, and Defendant Howell examined him the same day. (*Id.* ¶¶ 41-42). Defendant Howell conferred with Defendant Graham, who increased Plaintiff's Gabapentin prescription to 600 milligrams. (*Id.*) On August 15, 2021, Plaintiff submitted another sick call complaining of pain in his back, neck, kidney, and hip and requested physical therapy and medical modification. (*Id.* ¶ 43). Defendant Howell examined Plaintiff the next day and told him that his MRI showed C6-C7 arthritis with bone spurs and bulging lumbar discs, that the physician had ordered no special privileges or surgeries, and that jails do not provide inmates physical therapy. (*Id.* ¶ 44). On August 18, 2021, Plaintiff submitted another sick call complaining of back pain and requested Tramadol three times per day along with physical therapy. (*Id.* ¶ 45). Defendant Howell examined Plaintiff on August 20, 2021, advised him that the physician had denied his request for Tramadol, and reiterated that Plaintiff could have Tylenol or Ibuprofen between his prescribed Gabapentin if needed. (*Id.* ¶ 46). On August 22, 2021, Plaintiff submitted another sick call complaining again of back and neck pain and again requesting physical therapy. (*Id.* ¶ 47). Defendant Howell examined Plaintiff again the next day and advised him that the physician was still denying his request for Tramadol, that the Sheriff would not take him to physical therapy, and that his MRI results did not show a need for surgery. (*Id.* ¶ 48).

The record shows that Plaintiff continued to submit sick calls and receive medical treatment throughout his time at WCJ until he was transferred to Jackson State Prison on November 23, 2023. (*See generally* Doc. 52-1).

ANALYSIS

Plaintiff claims that Defendants (1) were deliberately indifferent to his serious medical needs by refusing to give him medical care and forcing him to remain outside of his cell during the day, (2) were deliberately indifferent to a substantial risk of serious harm presented by the conditions of the WCJ recreation yard, and (3) acted in retaliation because of his complaints about the lack of treatment and previously filed lawsuits against the Defendants. (Docs. 1; 5). Defendants King, Marcus, Adside, and Ford ("Sheriff's Office Defendants") collectively move for summary judgment, and Defendants Howell and Graham ("Medical Defendants") have filed a separate joint motion for summary judgment. (Docs. 54; 52). Plaintiff has not responded to the motions but has moved for appointment of counsel. (Docs. 58; 61).

Defendants King, Marcus, Adside, and Ford's Motion for Summary Judgment

Plaintiff claims that Defendants violated his rights by (1) being deliberately indifferent to his serious medical needs by denying him medical treatment for six to eight weeks after his alleged fall in the WCJ recreation yard, (2) being deliberately indifferent to his serious medical needs by refusing to allow him to rest in his cell during the day, and (3) being deliberately indifferent to the serious risk posed by the conditions of the recreation yard each fail to show a violation of his clearly established rights. Plaintiff also alleges that the Sheriff's Office Defendants committed these violations in retaliation for his many complaints and previous lawsuits against the Defendants. Defendants King, Marcus, Adside, and Ford move for summary judgment on the grounds that (1) they are entitled to qualified immunity and (2) there is no evidence that they retaliated against Plaintiff.[5] (Doc. 54-1).

[5] Defendants King, Marcus, Adside, and Ford have interpreted Plaintiff's claims as claims against them in their individual capacity, as any official capacity claims against them would be barred by sovereign immunity under the Eleventh Amendment. (Doc. 54-1 at 2 n.1); *see Manders v. Lee*, 338 F.3d 1304, 1328-29 (11th Cir. 2003). As nothing in Plaintiff's filings indicates that he intended to file his claims against these Defendants in their official capacities,

"Qualified immunity protects government officials if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Nam Dang v. Sheriff, Seminole Cnty., Fla.*, 871 F.3d 1272, 1278 (11th Cir. 2017) (internal citation omitted). "A government actor can be stripped of qualified immunity only when all reasonable government actors in the defendant's place would know that the challenged discretionary conduct violates federal law." *Adams v. Poag*, 61 F.3d 1537, 1543 (11th Cir. 1995) (citations omitted). "To be entitled to qualified immunity, a public official 'must first prove that he was acting within the scope of his discretionary authority when the allegedly wrongful acts occurred." *Nam Dang* 871 F.3d at 1279. "An official acts within his discretionary authority if his actions (1) were undertaken 'pursuant to the performance of his duties,' and (2) were 'within the scope of his authority.'" *Id.* (quoting *Rich v. Dollar*, 841 F.2d 1558, 1564 (11th Cir. 1988). Plaintiff's allegations all pertain to the Defendants' actions in the course of their duties as jail officials, in which they provided Plaintiff with medical care and controlled the conditions of his confinement. Additionally, Plaintiff, who failed to respond, has not argued that Defendants acted outside of the scope of their discretionary authority. Therefore, the Court concludes that the Defendants have shown they were acting within their discretionary authorities at the relevant times and are eligible to assert qualified immunity.

After a defendant establishes that he was acting within his discretionary authority, "the burden shifts to the plaintiff to show that qualified immunity is not appropriate." *Myrick v. Fulton Co., Ga.*, 69 F.4th 1277, 1297 (11th Cir. 2023). A plaintiff fulfills this burden by showing that (1) the facts, viewed in the light most favorable to the plaintiff, show that the defendant's conduct violated a constitutional right, and (2) that the violated right was clearly

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this Recommendation limits its analysis to Plaintiff's claims against these Defendants in their individual capacities.

established at the time of the alleged violation. *Id.* (citing *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). These two elements may be addressed in any order, and if the plaintiff fails to show one is fulfilled, the Court need not reach the other. *Id.*

The first step of qualified immunity analysis is the identification of the "precise constitutional violation" that the plaintiff alleges and the explanation of "what the violation requires." *Franklin v. Curry*, 738 F.3d 1246, 1250 (11th Cir. 2013). In this case, Plaintiff has alleged that the Sheriff's Office Defendants (1) were deliberately indifferent to Plaintiff's serious medical needs by denying him medical treatment, (2) were deliberately indifferent to Plaintiff's serious medical needs by refusing to allow him to remain in his cell during daytime hours and forcing him to sit on a small metal stool, (3) were deliberately indifferent to a substantial risk of serious harm posed by the conditions of the WCJ recreation yard, and (4) committed the alleged violations of Plaintiff's constitutional rights in retaliation for his lawsuits against them and other jail officials.

The evidence presented, construed in the light most favorable to the Plaintiff, fails to show that Defendants violated Plaintiff's constitutional rights. Accordingly, qualified immunity applies to the Sheriff's Office Defendants, and Plaintiff's claims against them should be dismissed. *See Myrick*, 69 F.4th at 1297.

1. Denial of Medical Treatment

First, there is no evidence that shows the Sheriff's Office Defendants acted with deliberate indifference to Plaintiff's serious medical needs by denying him necessary medical treatment. On the contrary, the record shows that the Medical Defendants were responsible for Plaintiff's medical care and that Plaintiff received extensive health care while he was at WCJ.

To establish deliberate indifference to a serious medical need, Plaintiff must satisfy three elements: (1) Plaintiff must satisfy the objective component of the deliberate indifference analysis by showing that he had a serious medical need, (2) Plaintiff must satisfy the subjective component of the analysis by showing that the Defendants acted with deliberate indifference to his serious medical need, and (3) Plaintiff must show that his injury was caused by the Defendants' wrongful conduct. *Goebert v. Lee County*, 510 F.3d 1312, 1326 (11th Cir. 2007).

"A serious medical need is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Dang ex rel. Dang v. Sheriff,* 871 F.3d 1272, 1280 (11th Cir. 2017) (internal quotation marks omitted). Further, "the medical need must be one that, if left unattended, poses a substantial risk of serious harm." *Id.* (internal quotation marks omitted). Viewed in the light most favorable to Plaintiff, the record reflects that he had a serious medical need, as he received diagnoses and was prescribed treatment for his injuries and conditions throughout his various incarcerations. (*See* Doc. 52-1). Moreover, Defendants do not argue that Plaintiff did not have a serious medical need.

Nevertheless, the undisputed facts refute Plaintiff's claims that the Defendants acted with deliberate indifference. To fulfill the subjective requirement and show that a defendant acted with deliberate indifference, "[a] prisoner must … show a prison official's subjective intent to punish by demonstrating that the official acted with deliberate indifference." *Bingham v. Thomas*, 654 F.3d 1171, 1176 (11th Cir. 2011). Despite Plaintiff's contentions that the Sheriff's Office Defendants were personally aware of his serious medical needs, repeatedly ignored those needs, and refused him medical care for six to eight weeks, the record shows both that the Sheriff's Office Defendants had little to do with Plaintiff's medical care and that Plaintiff

consistently received regular medical care at WCJ. After Plaintiff allegedly fell on June 20, 2021, he reported his fall on June 22, 2021, and Defendant King took him to the hospital on June 24, 2021. (Doc. 54-2 ¶ 11). Plaintiff continued his medical care with the jail medical staff after his fall, just as he had been receiving medical care with the medical staff prior to his fall. (*See* Doc. 52-1 ¶¶ 11-12, 16-48). After he took Plaintiff to the hospital, Defendant King was no longer involved in Plaintiff's medical care, as he left that to the medical staff. (Doc. 54-2 ¶ 12). This was also true of the other Sheriff's Office Defendants, who were not present for Plaintiff's consultations with medical staff, subsequent treatment after Plaintiff's fall, or other medical care. (*Id.*) Defendant King did not confer with the Medical Defendants about the severity of Plaintiff's existing injuries or his alleged new injury. (*Id.*) Defendant King testifies that he never had any reason to believe that Plaintiff was not receiving competent health care from the jail's medical staff (*Id.*), and there is no evidence in the record to suggest that he did.

Despite the fact that Sheriff's Office Defendants were not personally responsible for providing Plaintiff medical care, the record shows that Plaintiff frequently received medical care from the jail's medical staff. Plaintiff typically submitted sick calls every few days and shortly after was examined by the Medical Defendants. (*See* Doc. 52-1 ¶¶ 11-48). There was no gap of six to eight weeks where Plaintiff was denied treatment entirely after his August 11, 2021 MRI. (*See* Doc. 52-1 ¶ 41-48).

Although the facts reflect that Plaintiff received substantial care at WCJ, even a failure to receive adequate medical treatment would not necessarily meet the standard for deliberate indifference. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Rather, a finding of deliberate indifference requires medical treatment that "is so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." *Harris v. Thigpen*, 941

F.2d 1495, 1505 (11th Cir. 1991). Many of Plaintiff's complaints seem to reflect that he continued to experience pain after receiving care, but a prison official's failure to treat an inmate's pain must be "so cursory as to amount to no care at all" to "rise to the level of deliberate indifference." *Williams v. Barrow*, 559 F. App'x 979, 984-85 (11th Cir. 2014). Plaintiff's complaints may also result from his dissatisfaction with the care he received or a desire for different care, but "a simple difference in medical opinion between the prison's medical staff and the inmate as to the [inmate's] course of treatment [cannot] support a claim of cruel and unusual punishment." *Harris*, 941 F.2d at 1505. Regardless of the source of Plaintiff's dissatisfaction with his treatment, none of Plaintiff's pleadings show that the Sheriff's Office Defendants acted with deliberate indifference in light of the record, which reflects consistent medical care from medical staff.

Finally, for similar reasons, Plaintiff cannot show that Defendants' conduct caused his injuries. To satisfy the causation element of deliberate indifference, a plaintiff must show that the defendant's "deliberate conduct" was the "moving force" behind his injury. *McDowell v. Brown*, 392 F.3d 1283, 1292 (11th Cir. 2004). Plaintiff failed to show deliberate conduct that meets the requirements for deliberate indifference, and nothing in the record supports the contention that the Sheriff's Office Defendants' conduct caused Plaintiff injury. Beyond the Sheriff's Office Defendants' lack of involvement with Plaintiff's medical care, the record shows that the MRI scan taken while Plaintiff was at WCJ reflects the same conditions he had before he entered WCJ. (Doc. 52-1 ¶ 39). Additionally, although Plaintiff claims that his current doctors say that his conditions have worsened, that is inherently the nature of the degenerative conditions Plaintiff claims to have. Plaintiff has provided no evidence or argument to support the idea that Defendants caused him any measurable injury through their conduct.

Because there is no evidence that the Defendants acted with deliberate indifference to Plaintiff's needs or that any action by Defendants caused Plaintiff any injuries, qualified immunity should bar Plaintiff's claim of deliberate indifference to a serious medical need by denying medical treatment.

2. Refusal to allow Plaintiff to stay in his cell

Plaintiff argues that Defendants were deliberately indifferent to his serious medical needs when they refused to allow him to rest in his cell for 12 hours of each day. Plaintiff claims that this forced him to sit on a metal stool, which was uncomfortable and exacerbated his injuries. Defendant King has provided significant testimony about relevant jail policies that contradict Plaintiff's allegations. Under these policies, all inmates at WCJ are required to leave their cells from 8:00 A.M. to 4:30 P.M, not for twelve hours a day. (Doc. 54-2 ¶ 20). Exceptions to these rules are made only when inmates receive a medical pass from jail medical staff. (*Id.*). Because Plaintiff did not receive a medical pass, Plaintiff was required to adhere to jail rules and stay out of his cell for the normal amount of time each day. Defendants deny that this policy forced Plaintiff to sit on an uncomfortable metal stool and claim that he could have used the blanket from his cell as extra padding when he sat if he wished. (*Id.*) Defendants relied upon the medical staff's decision not to issue Plaintiff a medical pass. (*Id.*) Defendants argue that Plaintiff has no clearly established right to unlimited access to his bed during daytime hours, and therefore, that Plaintiff cannot defeat qualified immunity.

The conditions Plaintiff describes fail to meet the high standards for deliberate indifference. There is no clearly established right to lie down or stay in a cell during the day, and it was not unreasonable for Defendants to defer to the medical judgment of the jail's medical staff to determine whether an inmate's medical needs required deviation from normal jail

policies. Plaintiff has also not clearly alleged an injury that resulted from the refusal to allow Plaintiff to stay in his bunk all day. Plaintiff merely claims that he experienced unnecessary pain and suffering, although the record shows Plaintiff had been experiencing pain and suffering from his neck and back issues even before he entered WCJ. (*See* Doc. 52-1 ¶ 11-12). Accordingly, Plaintiff has neither shown that the Sheriff's Office Defendants acted with deliberate indifference nor shown that the Defendant's actions caused his injury. Qualified immunity therefore bars Plaintiff's claim of deliberate indifference to a serious medical need by requiring Plaintiff to remain outside his cell during the day.

3. Conditions of the recreation yard

Plaintiff alleges that Defendants were deliberately indifferent to a serious risk of harm posed by the conditions of the WCJ recreation yard. "Conditions of confinement imposed prior to conviction are limited . . . by the due process clause of the fourteenth amendment." *Hamm v. Dekalb Cnty*., 774 F.2d 1567, 1572 (11th Cir. 1985); *see also White v. Cochran*, No. 16-17490-G, 2017 WL 6492004, at *2 (11th Cir. Nov. 27, 2017) (per curiam). The standard for providing pretrial detainees with basic necessities while incarcerated is the same standard as required by the Eighth Amendment for convicted persons. *Hamm*, 774 F.2d at 1574. To state a conditions-of-confinement claim, "a plaintiff must show a condition of confinement that inflicted unnecessary pain or suffering, the defendant's deliberate indifference to the condition, and causation." *White*, 2017 WL 6492004, at *3.[6] The plaintiff must demonstrate that the deprivations about which he complains are objectively and sufficiently "serious" or "extreme" as to constitute a denial of the "minimal civilized measure of life's necessities." *Thomas v. Bryant*, 614 F.3d 1288, 1304 (11th Cir. 2010); *see also Brooks v. Warden*, 800 F.3d 1295, 1303-04 (11th Cir. 2015). This standard is

[6] The Eleventh Circuit has indicated that it will continue to use the subjective deliberate indifference standard unless a pretrial detainee is asserting an excessive force claim. *See Swain v. Junior*, 961 F.3d 1276, 1285 n.4 (11th Cir. 2020).

only met when the challenged conditions pose "an unreasonable risk of serious damage to [the prisoner's] future health or safety" (*Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004) (internal quotation marks omitted)), or if society "considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk." *Helling v. McKinney*, 509 U.S. 25, 36 (1993).

Plaintiff's complaints about the recreation yard fail to meet these standards. Allegations that a certain portion of concrete has inadequate drainage and becomes slippery when wet do not constitute sufficiently "serious" or "extreme" deprivations. *See Goolsby v. Hill*, No. 517CV00256MTTCHW, 2017 WL 5895138, at *3 (M.D. Ga. Nov. 29, 2017) ("slippery floors constitute a daily risk faced by members of the public at large and do not violate the Eighth Amendment"); Dunston v. Carter, No. 1:13-CV-103 WLS, 2013 WL 4039398, at *1 (M.D. Ga. Aug. 7, 2013) ("Slippery floors, without more, do not arise to an Eighth Amendment violation.")

Moreover, the record presents doubts about the truthfulness of Plaintiff's allegations. Although Plaintiff complains that the yard could not meet inspection requirements, lacked proper drainage, and was inordinately slippery because of paint and mold, Defendants have submitted testimony that rebuts those allegations. Moreover, Defendants have offered testimony that inmates were not allowed in the area in question and, contrary to Plaintiff's assertion that at least three other unnamed inmates fell in the same area, that no one else has fallen there to Defendants' knowledge.

Accordingly, Plaintiff has failed to show that Defendants were deliberately indifferent to a serious risk of harm.

4. Retaliation claims

To show that the Defendants improperly retaliated against Plaintiff for filing a lawsuit, Plaintiff must show (1) that he engaged in constitutionally protected speech (like the filing of a lawsuit), (2) that Defendants' conduct had an adverse effect upon Plaintiff's protected speech, and (3) a causal connection between the two. *Bennett v. Chitwood*, 519 F. App'x 569, 575 (11th Cir. 2013). Specifically, Plaintiff must show that the Defendants were "subjectively motivated by [his] protected speech" when they engaged in the alleged violations of Plaintiff's rights. *Id.* Plaintiff has made no such showing. Upon this record, it is difficult to see how Plaintiff could make such a connection, as he has also failed to show any deliberate indifference to a serious medical need or serious risk of harm by Defendants that caused him any injury.

In conclusion, the facts show that the Sheriff's Office Defendants were acting within their discretionary power during the alleged events and Plaintiff has not met his burden of showing that Defendants violated his clearly established constitutional rights. The Sheriff's Office Defendants are entitled to qualified immunity. Accordingly, it is **RECOMMENDED** that Defendants King, Marcus, Adside, and Ford's Motion for Summary Judgment (Doc. 54) be granted.

Defendants Powell and Graham's Motion for Summary Judgment

Plaintiff claims that Defendants Powell and Graham, the Medical Defendants, violated his rights by (1) being deliberately indifferent to his serious medical needs denying him medical treatment for six to eight weeks after his alleged fall in the WCJ recreation yard, (2) being deliberately indifferent to his serious medical needs by refusing to allow him to rest in his cell during the day, and (3) being deliberately indifferent to the serious risk posed by the conditions of the recreation yard. (Docs. 1, 5). Plaintiff also alleges that the Medical Defendants committed these violations in retaliation for his many complaints and previous lawsuits against

the Defendants. (*Id.*) Defendants Powell and Graham move for summary judgment on the grounds that (1) they were not deliberately indifferent to Plaintiff's serious medical needs, (2) Plaintiff has shown no injury caused by their alleged conduct, (3) they did not retaliate against Plaintiff, and (4) they had no control over Plaintiff's general conditions of confinement. (Doc. 52-2). Although the Medical Defendants do not address the issue of Plaintiff being forced to remain outside of his cell during the day in detailed argument, the record shows that Plaintiff cannot sustain a claim of deliberate indifference against the Medical Defendants on this basis either.

1. Denials of medical treatment

As explained above, to establish deliberate indifference to a serious medical need, Plaintiff must satisfy three elements: (1) Plaintiff must show that he had a serious medical need, (2) Plaintiff must show that the Defendants acted with deliberate indifference to his serious medical need, and (3) Plaintiff must show that his alleged injury was caused by the Defendants' wrongful conduct. *Goebert v. Lee County*, 510 F.3d 1312, 1326 (11th Cir. 2007).

As with the Sheriff's Office Defendants, Plaintiff's claims against the Medical Defendants fail because he cannot show that they acted with deliberate indifference or that there is any causal connection between their conduct and his alleged injuries. The record shows that Defendants Howell and Graham provided Plaintiff with significant medical care, including pain treatment. (*See* Doc. 52-1). Additionally, the record shows that Plaintiff's allegations about the medical care he received—namely, that he received no care at all after his MRI on August 11, 2021— are simply untrue. Plaintiff was examined multiple times and received substantial medical care for his various ailments after the MRI. *Id*. Although the care that Plaintiff received may not have been the care that Plaintiff would have preferred, "a simple difference in medical

opinion between the prison's medical staff and the inmate as to the [inmate's] course of treatment [cannot] support a claim of cruel and unusual punishment." *Harris*, 941 F.2d at 1505. Even if the Medical Defendants had acted with negligence in Plaintiff's treatment, which the record does not show, such negligence would not rise to the level of deliberate indifference. *Mann v. Taser Intern., Inc.*, 588 F.3d 1291, 1308 (11th Cir. 2009).

Plaintiff also cannot show that he suffered any injury as a result of Defendants' actions. Plaintiff was already complaining of back pain when he arrived at WCJ, and the MRI taken while Plaintiff was at WCJ matched the results of an MRI taken before his incarceration at WCJ. Plaintiff's description of his current back and neck pain is that he continues to suffer from a degenerative disease, which is not linked by evidence or argument to the Defendants' treatment of Plaintiff. (Docs. 52-1 ¶¶ 12, 39; 15 at 3). To sustain his claims against the Defendants, Plaintiff must prove that their "deliberate conduct … was the 'moving force' behind his injury." *McDowell*, 392 F.3d at 1292. Plaintiff has not made this showing, and upon this record, it does not seem possible that he could show that Defendants caused his injury. Rather, the record reflects consistent and frequent medical care for ongoing back and neck pain and other ailments. (*See* Doc. 52-1).

Accordingly, Plaintiff cannot sustain a deliberate indifference claim against Medical Defendants for denials of medical care, because he cannot show that Defendants acted with deliberate indifference or that there is a causal relationship between their conduct and his injury.

2. Refusal to allow Plaintiff to stay in his cell

Although this claim is not substantively addressed, the Medical Defendants clearly state that they have no control over the inmates' conditions of confinement or broader jail policies. The Medical Defendants are contracted to provide medical care to the prisoners, and they do not

have the ability to control other aspects of jail conditions. (Doc. 52-1 ¶ 24). Plaintiff has not submitted any evidence to show that the Medical Defendants had any influence on jail conditions. Accordingly, the Medical Defendants have no control over the jail's policies that require all inmates without a medical pass to remain outside of their bunks during the day. Defendant Graham made a medical determination that Plaintiff's MRI results did not warrant a medical pass, and Plaintiff has presented no evidence to show that this was an incorrect decision. (*Id.* ¶ 40). Even if there was some error in Defendant Graham's reasoning, and even if that error rose to the level of negligence or malpractice, such error would not meet the standard required for deliberate indifference. *Harris*, 941 F.2d at 1505. Moreover, Plaintiff has made no argument, and the record supports no finding, that the denial of a medical pass that would have allowed Plaintiff to remain in his cell caused Plaintiff's injuries.

Accordingly, Plaintiff's deliberate indifference claim regarding the refusal to allow him to remain in his cell cannot be sustained against the Medical Defendants.

3. Conditions of confinement claims

The undisputed facts show that Defendants Howell and Graham were not employees of WCJ, but rather employees of Southern Health whose duties were limited to medical care and administration. There is no basis in Plaintiff's pleadings to suggest that the Medical Defendants could be deliberately indifferent to any risk posed by the conditions of the recreation yard at WCJ or that Defendants Howell and Graham had any control over the conditions of the recreation yard. In fact, the Defendants both testify that they have no control over the conditions of confinement beyond providing the inmates with medical care. (Doc. 52-1 ¶ 24). Therefore, it is impossible to meet the standards for a successful conditions of confinement claim, as the evidence does not and cannot demonstrate that with knowledge of the infirm conditions of

confinement of the recreation yard, the Medical Defendants "knowingly or recklessly declined to take actions that would have improved the conditions" of the recreation yard. *Thomas v. Bryant*, 614 F.3d 1288, 1312 (11th Cir. 2010).

Accordingly, Plaintiff cannot sustain claims against the Medical Defendants for conditions of confinement that were outside of their control.

4. Retaliation claims

As explained above, to show that the Defendants improperly retaliated against Plaintiff for filing a lawsuit, Plaintiff must show (1) that he engaged in constitutionally protected speech (like the filing of a lawsuit), (2) that Defendants' conduct had an adverse effect upon Plaintiff's protected speech, and (3) a causal connection between the two. *Bennett v. Chitwood*, 519 F. App'x 569, 575 (11th Cir. 2013). Specifically, Plaintiff must show that the Defendants were "subjectively motivated by [his] protected speech." *Id.* Plaintiff has made no such showing. Upon this record, it is difficult to see how Plaintiff could make such a connection, as he has also failed to show any deprivation of care or inadequate care from Defendants that caused him any injury.

Accordingly, Plaintiff cannot sustain his retaliation claims against the Medical Defendants.

Plaintiff has not supported his claims of deliberate indifference to a serious medical need, deliberate indifference to a substantial risk of serious harm, or retaliation against the Medical Defendants. Accordingly, it is **RECOMMENDED** that Defendants Howell and Graham's motion for summary judgment (Doc. 52) be **GRANTED.**

Plaintiff's Motions to Appoint Counsel

Plaintiff filed a response to the motion for summary judgment that amounts to a motion to appoint counsel (Doc. 58), as well as a standard motion for appointment of counsel (Doc. 61). In Plaintiff's "Response to Summary Judgment," Plaintiff claims that he "need[s] legal assistance to resolve [his] § 1983 federal grievances as [he is] unable to remember or move forward on how to explain/prosecute [his] cases." (*Id.* at 1). Plaintiff claims he is experiencing difficulties with his litigation responsibilities because he was assaulted twice in the six months before his filing, first by another inmate and then by correctional officers. (*Id.*) Plaintiff alleges that he sustained head injuries, among other injuries, during these assaults that are specifically affecting his ability to continue in this case. (*Id.* at 2). Plaintiff has a history of dishonesty with the Court, as he failed to disclose his past lawsuits when filing this case, and the record shows that several of his allegations in this case are patently untrue, such as his claim that he received no medical care after his August 11, 2021, MRI. (Docs. 1; 15; *compare to* 52-1); *see also Negrin v. Everidge,* 5:19-cv-00354-MTT- CHW (M.D. Ga. Sept. 5, 2019); *Negrin v. Felder,* 5:19-cv-00391-TES-MSH (M.D. Ga. Sept. 30, 2019); *Negrin v. Gary*, 5:20-cv-00428-TES-CHW (M.D. Ga. Nov. 6, 2020); *Negrin v. Mitchum,* 5:20-cv-00399-TES-CHW (M.D. Ga. Oct. 15, 2020); *Negrin v. Felder,* 5:21-cv-00017-TES-CHW (M.D. Ga. Jan. 11, 2021); *Negrin v. Rape*, 5:21-cv-00161-TES-MSH (M.D. Ga. Jan. 19, 2021); *Negrin v. Chatman,* 5:21-cv-00245-MTT-MSH (M.D. Ga. July 20, 2021). These facts make the Court skeptical of Plaintiff's truthfulness in his request.

Additionally, Plaintiff clearly articulated his claims and factual allegations in his complaint and subsequent supplement to his complaint (Docs. 1; 15). Based on the clarity of the factual allegations in Plaintiff's initial filings and Plaintiff's failure even to attempt to respond substantively to the Defendants' motions for summary judgment, despite clear instruction from

the Court to proceed as best as he is able in the Court's previous order (Doc. 50), the Court finds no basis to delay this case to appoint counsel.

"Appointment of counsel in a civil case is not a constitutional right." *Wahl v McIver*, 773 F.2d 1169, 1174 (11th Cir. 1986). Appointment of counsel is a privilege that is justified only by exceptional circumstances. *Id*. In deciding whether legal counsel should be provided, the Court considers, among other factors, the merits of Plaintiff's claim and the complexity of the issues presented. *Holt v. Ford*, 862 F.2d 850, 853 (11th Cir. 1989).[7] But "[t]he key" in determining whether appointed counsel is warranted "is whether the *pro se* litigant needs help in presenting the essential merits his position to the court." *Nelson v. McLaughlin*, 608 F. App'x 904, 905 (11th Cir. 2015) (per curiam). In accordance with *Holt*, and upon a review of the record in this case, the Court notes that Plaintiff has set forth the essential merits of his claims, and the applicable legal doctrines are readily apparent. In this case, the Defendants' legal arguments, undisputed statements of fact, and other record submissions provide an adequate basis for granting summary judgment. As such, Plaintiff's motions for appointment of counsel (Docs. 58; 61) are **DENIED.**

CONCLUSION

Because the undisputed facts do not support Plaintiff's deliberate indifference claims, it is **RECOMMENDED** that Defendants' motions for summary judgment (Docs. 52; 54) be **GRANTED.** Plaintiff's motions for appointment of counsel (Docs. 58; 61) are **DENIED.**

OBJECTIONS

[7] The federal *in forma pauperis* statute authorizes courts to "request an attorney to represent any person unable to afford counsel," 28 U.S.C. § 1915(e)(1). The statute does not, however, provide any funding to pay attorneys for their representation or authorize courts to compel attorneys to represent an indigent party in a civil case. *See Mallard v. U.S. Dist. Ct. for S. Dist. of Iowa*, 490 U.S. 296 (1989).

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to these recommendations with the presiding District Judge **WITHIN FOURTEEN (14) DAYS** after being served with a copy of this Recommendation. The parties may seek an extension of time in which to file written objections, provided a request for an extension is filed prior to the deadline for filing written objections. Any objection is limited in length to **TWENTY (20) PAGES.** *See* M.D. Ga. L.R. 7.4. Failure to object in accordance with the provisions of § 636(b)(1) waives the right to challenge on appeal the district judge's order based on factual and legal conclusions to which no objection was timely made. *See* 11th Cir. R. 3-1.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

SO RECOMMENDED, this 3rd day of July, 2023.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge