

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CEDRIC JOHNSON,

Plaintiff,

v.

PHIL KINGSTON,
TIM DOUMA, JACK KESTIN and
BILL PUCKETT,

Defendants.

ORDER

03-C-0143-C

Plaintiff has moved for reconsideration of the order entered in this case on July 14, 2003, denying his motion for appointment of counsel. In addition, he has filed a document titled "Motion for Court Order for Legal Recreation, Legal Assistance, Pending Court Dates."

In his motion for reconsideration of the July 14 order, plaintiff emphasizes his physical and mental health problems and the difficulty he faces in utilizing the prison's law library. In the "motion for court order . . . ," plaintiff states that he is being prevented from increasing his legal recreation time because he has not provided prison staff with a court order and "pending court date." Both of plaintiff's motions will be denied.

In order to succeed in this action, plaintiff must prove that defendants retaliated

against him for exercising his right of access to the courts by transferring him to Waupun Correctional Institution. According to the magistrate judge's order of July 28, 2003, defendants have until August 11, 2003, in which to support their motion for summary judgment and plaintiff has until September 11, 2003, in which to oppose the motion.

Even taking into account plaintiff's medical and mental health difficulties, I am not persuaded that he is incapable of presenting evidence he has to prove his case in response to defendants' motion for summary judgment. Plaintiff's problems have existed for several years. Although they may affect the speed at which he is able to prepare his submissions in this case, the deadlines are sufficiently generous to allow plaintiff to prepare his submissions. Moreover, as I stated in the July 14 order denying plaintiff's earlier motion for appointment of counsel, plaintiff does not need to find case law to support his claim. The law is settled that state officials may not retaliate against a prisoner for exercising his constitutional right of access to the courts. What plaintiff must do to succeed on his claim is present evidence to show that the defendants arranged and approved his transfer because of his prior legal activities. If such evidence exists, plaintiff should have it already or be able to obtain it through discovery. If it does not exist, plaintiff will not succeed on his claim, with or without a lawyer.

If plaintiff believes he must spend more time in the prison law library to prepare his submissions in this case, he has in his possession at least two orders that he can show prison

officials in making his request for daily library time. He can produce a copy of the magistrate judge's July 28 order and the magistrate judge's July 16, 2003 preliminary pretrial conference order, which sets plaintiff's trial date and numerous other deadlines to which the parties must adhere in moving this case to resolution.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration of the July 14, 2003 order denying his motion for appointment of counsel is DENIED.

Further, IT IS ORDERED that plaintiff's "Motion for Court Order for Legal Recreation, Legal Assistance, Pending Court Dates" is DENIED.

Entered this 5th day of August, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge