

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

JOSEPH D. KOUTNIK,

Plaintiff,

v.

LEBBEUS BROWN,

Defendant.

ORDER

04-C-911-C

Plaintiff Joseph Koutnik is proceeding in this case on his claim that defendant Lebbeus Brown violated his rights under the First Amendment by refusing to deliver a piece of outgoing mail on September 2, 2004 and by disciplining him for writing the letter on September 5, 2004. The parties have filed cross-motions for summary judgment. According to the schedule established for briefing the motions, each side had until September 6, 2005, in which to oppose the other's motion, and each had until September 16, 2005, in which to serve and file a reply. Defendants filed their materials in opposition to plaintiff's motion on September 6. Plaintiff's opposing materials did not arrive at the court until September 9, 2005. However, in a cover letter accompanying the submissions dated September 6, 2005, plaintiff's states that he is "today" mailing his brief, response to defendants' proposed

findings of fact and second affidavit to defense counsel. Therefore, I will assume that on September 6, 2005, plaintiff delivered his opposition papers to prison authorities for mailing to the court and opposing counsel and that his submissions are therefore timely under Houston v. Lack, 487 U.S. 266 (1988) (prisoner's filing timely if delivered to prison authorities for mailing within applicable time limit). Now, however, defendants' lawyer, Assistant Attorney General Adrian Dresel-Velasquez, has written a letter to the court dated September 13, 2005, stating that defendants have not received plaintiff's submissions in opposition to their motion for summary judgment and, therefore, defendants will not be filing a reply.

Rather than delay the progress of this case further by investigating the whereabouts of the copies of plaintiff's submissions that plaintiff sent to them, I am enclosing a copy of plaintiffs' materials to defendants with a copy of this order. In addition, I will extend the schedule to allow defendants an opportunity to submit a reply to those material.

ORDER

IT IS ORDERED that the schedule for briefing defendants' motion for summary judgment is AMENDED to allow defendants until September 30, 2005, in which to serve

and file a reply.

Entered this 19th day of September, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge