

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

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GLENN T. TURNER,

Plaintiff,

ORDER

v.

11-cv-708-bbc

WILLIAM SWIEKATOWSKI,

Defendant.  
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The Court of Appeals for the Seventh Circuit has remanded this case to allow pro se prisoner Glenn Turner to proceed to trial on his claim that defendant William Swiekatowski violated plaintiff's Eighth Amendment rights by encouraging other prisoners to assault him. Turner v. Pollard, 13-2844, 2014 WL 1706175 (7th Cir. May 1, 2014). Plaintiff has filed two motions, which are ready for review: (1) a motion under Fed. R. Civ. P. 60 to vacate the judgment to allow him to seek the return of photographs and a letter that prison officials confiscated from him, dkt. #133; and (2) a motion for appointment of counsel, which I construe as a motion for assistance in recruiting counsel. Dkt. #131. I am denying both motions.

With respect to the Rule 60 motion, plaintiff did not include a claim in his complaint that prison officials violated his rights by confiscating the photographs and letters. Rather, I allowed him to proceed on a claim that officials *disciplined* him for possessing photographs

of other prisoners, in violation of the First Amendment. In the summary judgment opinion, I dismissed the claim because plaintiff had not adduced any evidence that the photographs contributed to the discipline:

Although [the hearing officer's] disciplinary decision suggests that he used the photographs as evidence of plaintiff's gang activity, [the hearing officer] did not say in his decision that he was punishing plaintiff for possessing the photographs, perhaps because there was no evidence that plaintiff ever possessed them. Plaintiff cites no other evidence suggesting that he was disciplined for having the photos. Although I assume that defendants confiscated the photos, plaintiff did not request an injunction requiring defendants to give the photos to him, so I see no harm that can be remedied by this lawsuit if plaintiff were to prevail on this claim. A federal court cannot decide the merits of a claim unless the plaintiff has shown that success on the claim will redress an injury caused by the defendants' conduct. Milwaukee Police Association v. Board of Fire & Police Commissioners of City of Milwaukee, 708 F.3d 921, 926 (7th Cir. 2013).

Dkt. #108 at 19. Alternatively, I concluded that, even if plaintiff had included a claim that officials were violating his rights by refusing to give him the photographs, that claim would fail because officials had sufficient grounds to find that the photographs were gang-related. Id. On appeal, the court of appeals stated that "nothing in the record shows that [plaintiff] was punished for possessing [the photographs], so the district court properly rejected this claim, and we need say nothing further about it." Turner, 2014 WL 1706175 at \*3.

To the extent that plaintiff is challenging the determinations that he was not punished for possessing the photographs and that he never raised a claim that officials violated his First Amendment rights by refusing to give him the photographs, those arguments are barred by the law of the case. Kovacs v. United States, 739 F.3d 1020, 1024 (7th Cir. 2014) ("A court to which a case has been remanded may address only the issue or

issues remanded, issues arising for the first time on remand, and issues that were timely raised but which remain undecided.”). To the extent plaintiff is seeking leave to amend his complaint to include a new claim that the First Amendment requires prison officials to give him the photographs and letter, I am denying that request as untimely and unfairly prejudicial. Carroll v. Stryker Corp., 658 F.3d 675, 684 (7th Cir. 2011); Johnson v. Cypress Hill, 641 F.3d 867, 871-73 (7th Cir. 2011); George v. Kraft Foods Global, Inc., 641 F.3d 786, 789-91 (7th Cir. 2011). This case was filed in 2011 and is proceeding to trial on plaintiff’s claim against Swiekatowski, which is not related to a potential claim about the letter or the photographs. Particularly because plaintiff identifies no reason he failed to raise this claim before, it is far too late for him to raise it now.

Even if plaintiff’s request were timely, I would deny it as futile. As I explained in the summary judgment opinion, prison officials had reasonable grounds for concluding that the photographs were related to gang activity, which is all they needed under the relevant First Amendment standard. Turner v. Safley, 478 U.S. 82 (1987). The same conclusion would apply to the letter that accompanied the photographs.

With respect to plaintiff’s motion for assistance in recruiting counsel, the question is whether the complexity of the case exceeds plaintiff’s ability to litigate it. Pruitt v. Mote, 503 F.3d 647, 655 (7th Cir. 2007). In this case, I have no difficulty in concluding that plaintiff is up to the task of representing himself.

With respect to plaintiff’s ability, thus far, he has shown that he is more than capable of understanding the law, gathering evidence, filing motions and making clear arguments.

Plaintiff's success on appeal is further evidence of his legal ability.

Plaintiff says that his ability is hindered by a "history of psychiatric and emotional disorders," but he does not identify what his mental health concerns are, let alone cite any evidence showing how they might limit his ability to litigate this case. I have seen no evidence of such limitations in any of plaintiff's filings to date. Olson v. Morgan, 750 F.3d 708, 712 (7th Cir. 2014) (affirming denial of motion to assist in recruiting counsel; "Olson points out that he suffers from severe depression and adult hyperactivity disorder (among other issues), but he never explains why those conditions would prevent him from coherently presenting his case, and his capable pleadings suggested that he was competent despite his mental-health problems").

Plaintiff also says that he is housed in solitary confinement and has limited time in the law library. Although the court of appeals has considered logistical difficulties that a prisoner faces in litigating his case, e.g., Bracey v. Grondin, 712 F.3d 1012, 1017 (7th Cir. 2013); Santiago v. Walls, 599 F.3d 749, 762-64 (7th Cir. 2010), plaintiff fails to explain why he needs more time in the law library than he has now or how being in solitary confinement is preventing him from preparing for trial. Plaintiff does not identify any additional discovery he needs that he cannot obtain or any significant legal research that he must perform before trial. Further, plaintiff has been in the same situation throughout the entire lawsuit without any obvious prejudice to him, so I do not see these limitations as reasons for granting plaintiff's motion.

With respect to the complexity of the case, plaintiff's sole remaining claim is that

defendant Swiekatowski attempted to incite other prisoners to attack him, in violation of the Eighth Amendment. That claim does not require plaintiff to understand any technical issues and it does not present complicated legal questions. Rather, the primary question for trial will be whether the jury believes plaintiff and any witnesses he intends to call to support his version of the story that Swiekatowaki “deliberately endangered [plaintiff’s] safety.” Turner, 2014 WL 1706175 at \*5.

Although plaintiff says that his claim is “complex” and will require expert testimony, he does not explain why he believes this. Because plaintiff has not been physically harmed and he cannot recover damages for emotional distress, 42 U.S.C. § 1997e(e), he will not need a medical expert. Further, because the determination on liability involves credibility issues primarily, I see no reason why plaintiff would need any other kind of expert either.

In sum, I am not persuaded that plaintiff has met the standard under Pruitt for recruiting counsel. To help plaintiff prepare for trial, the court will be sending plaintiff a memorandum that summarizes how a trial works and what plaintiff needs to do to call witnesses and submit evidence.

#### ORDER

IT IS ORDERED that plaintiff Glenn Turner’s motion for relief from the judgment

under Fed. R. Civ. P. 60, dkt. #133, and motion for assistance in recruiting counsel, dkt. #131, are DENIED.

Entered this 9th day of July, 2014.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge