

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

TERRANCE PRUDE,

Plaintiff,

v.

WILLIAM POLLARD, JEREMIAH LARSEN,
CYNTHIA RADTKE and CORY SABISH,

Defendants.

ORDER

13-cv-512-bbc

Pro se prisoner Terrance Prude is proceeding to trial on his claim that several prison officials disciplined him for complaining about staff misconduct, in violation of the First Amendment. Now before the court is a document that plaintiff calls “Petition for Writ of Habeas Corpus ad Testificandum,” but which is really a request to order prison officials to allow him to use money from his release account so that he may pay expenses related to trial subpoenas for each of the defendants.

The use of release account funds is governed by state law. Under Wis. Admin. Code § DOC 309.466(2), “[r]elease account funds may not be disbursed for any reason until the inmate is released to field supervision, except to purchase adequate clothing for release and for out-of-state release transportation.” The language of 28 U.S.C. § 1915(b)(1) suggests that prison officials are required to use a prisoner's release account to satisfy an initial partial payment if no other funds are available, Carter v. Bennett, 399 F. Supp. 2d 936, 936-37

(W.D. Wis. 2005), but it is within the state's discretion to decide whether, and to what extent, a prisoner should be able to withdraw money from his release account for any other purpose. Therefore, this court has no authority to direct prison officials to allow plaintiff access to his release account funds at this time.

However, subpoenas are not required if the defendants agree to appear at the trial voluntarily. Accordingly, I will give defendants an opportunity to inform plaintiff whether they will be present at trial in the absence of a subpoena.

ORDER

IT IS ORDERED that plaintiff Terrance Prude's "Petition for Writ of Habeas Corpus as Testificandum," dkt. #68, is DENIED. Defendants may have until November 8, 2014, to inform plaintiff whether they will be appearing voluntarily at trial.

Entered this 30th day of October, 2014.

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