

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

DENNIS E. JONES ‘EL, MICHA’EL
JOHNSON, DE’ONDRE CONQUEST,
LUIS NIEVES, SCOTT SEAL, ALEX
FIGUEROA, ROBERT SALLIE, CHAD
GOETSCH, EDWARD PISCITELLO,
QUINTIN L’MINGGIO, LORENZO
BALLI, DONALD BROWN, CHRISTOPHER
SCARVER, BENJAMIN BIESE, LASHAWN
LOGAN, JASON PAGLIARINI, and
ANDREW COLLETTE, and
all others similarly situated,

Plaintiffs,

v.

GERALD BERGE and
JON LITSCHER,

Defendants.

ORDER

00-C-421-C

Class member Evilio Duarte-Vestar has filed a document titled “Motion to Supplement the Record,” which I construe as a motion pursuant to Fed. R. App. P. 10(e) to modify the record on appeal. Fed. R. App. P. 10 (e) states in relevant part,

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected

and a supplemental record may be certified and forwarded:

- (A) on stipulation of the parties;
- (B) by the district court before or after the record has been forwarded; or
- (C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

It is impossible to make out precisely what document or documents Evilio Duarte-Vestar wants included in the appellate record. He refers to a papers “dated December 31, 2002 entered in the docket on January 6, 2003, among clerk letters to Wisconsin Secure Program Facility dated on March 22, 2003, May 17, 2003.” In addition, he refers to an order denying his “Motion-Objection on January 24, 2003, appeal no. 2013.” Finally, Duarte-Vestar requests that the court “supplement the record and introduction of newly discovered evidences (all) assert administrative confinements/level program rules (all) offending the United States Constitution.”

Any orders entered in this case after Duarte-Vestar filed his appeal on March 28, 2002, would have been part of the record on appeal. With respect to the “clerk letters,” it is unclear what those letters contain and what relevance they would have had to Duarte-Vestar’s appeal. In any event, it is too late for Duarte-Vestar to modify the record on appeal. The Court of Appeals for the Seventh Circuit dismissed Duarte-Vestar’s appeal on July 31, 2003. Most recently, on August 28, 2003, it denied Duarte-Vestar’s motion to recall the

mandate. Because Duarte-Vestar no longer has a pending appeal, his motion to modify the record on appeal will be denied as moot.

ORDER

IT IS ORDERED that inmate Evelio Duarte-Vestar's motion to modify the record on appeal no. 02-2013 is DENIED as moot.

Entered this 2nd day of September, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge