

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

JOSEPH D. KOUTNIK,

Plaintiff,

ORDER

v.

03-C-345-C

GERALD BERGE, JON E. LITSCHER,
MATTHEW FRANK, KURT LINJER
and GARY BLACKBOURN,

Defendants.

This case is scheduled for trial on September 27, 2004. In an opinion dated July 19th, 2004, I granted plaintiff summary judgment on his claim that defendants violated his First Amendment rights by censoring his mail and disciplining him for signing the name “Kujo” in a letter to his brother. The only issue remaining for trial is plaintiff’s damages. Presently before the court is plaintiff’s request for two writs of habeas corpus ad testificandum for inmates Thomas Reimann and Nate Lindell. Plaintiff asks the court to issue the writs so that these witnesses may appear at his trial.

A court may issue a writ of habeas corpus commanding the presence of an incarcerated person at court proceedings where the prisoner’s presence is necessary for a full

and fair hearing of the claim. Ford v. Carballo, 577 F.2d 404 (7th Cir. 1978); Stone v. Morris, 546 F.2d 730 (7th Cir. 1976). However, a court may refuse to bring inmate witnesses to court if it finds that their testimony will be irrelevant or redundant. See United States v. Solina, 733 F.2d 1208, 1213 (7th Cir. 1984). In determining whether an inmate's presence is necessary, the court must weigh the interests in having the prisoner in court against the state's interest in avoiding the risk and expense of transporting the prisoner. In re Warden of Wisconsin State Prison, 541 F.2d 177, 179 (7th Cir. 1976).

Plaintiff seeks damages which require him to show that defendants acted with "evil motive or intent, or . . . reckless or callous indifference to the federally protected rights of others." Kyle v. Patterson, 196 F.3d 695, 697-98 (7th Cir. 1999) (citations omitted). In support of the request for issuance of a writ of habeas corpus ad testificandum for inmate Thomas Reimann, plaintiff has submitted an affidavit given by Reimann. In his affidavit, Reimann avers that two prison officials, Captain Julie Biggar and defendant Linjer, have falsely accused him of being a member of several gangs. Reimann contends that Captain Biggar "tried to justify placing me on AC [administrative confinement] on the absurd premise I was a 'Latin King'" and refused to tell him "how she made her determination." Reimann also avers that defendant Linjer stated that the evidence leading to Capt. Biggar's decision was a letter written by Reimann in 1986 that he signed "Dilaudio King." In addition, Reimann avers that defendant Linjer "took well over 20 photos of all my tattoos,

asked me questions about virtually every tattoo and determined I was not a ‘Latin King.’” Reimann further alleges that defendant Linjer “insinuated” that some of Reimann’s tattoos were “identifier[s]” for the Aryan Circle, Gangster Disciples, and Black Panthers. Reimann states that he explained to Linjer that he was not a gang member and that Linjer “determined I was not a ‘gang member,’ but gave me one ‘identifier’ for a dime-sized swastika tattoo I got over 25 years ago.” Reimann also avers that “at WSPF [Wisconsin Special Program Facility] the administration has alleged that all WSPF captains are ‘experts’ at identifying ‘gang symbolism’ without any explanation given” and that “WSPF falsely labels prisoners as ‘gang members’ in order to justify the existence of WSPF.”

In support of the request for issuance of a writ of habeas corpus ad testificandum for inmate Nate Lindell, plaintiff submitted an affidavit given by Lindell. In his affidavit, Lindell avers that he was disciplined twice under Wis. Admin. Code § DOC 303.20 (which prohibits inmates from identifying with a gang by overt acts such as possessing gang literature or symbols), once for writing “wood” in a letter to another prisoner, “which Cpt. Linjer alleged violated § 303.20” and once for “possessing a copy of the ‘88 Precepts.” Lindell also avers that he “learned from another inmate that he was disciplined pursuant to § DOC 303.20 simply for having a poem with the word ‘Aryan’ in it.” Lindell further alleges that he is “afraid of being punished . . . for merely possessing or discussing in my mail white nationalistic views or my religious views” because the Wisconsin Department of Corrections

“considers them ‘gang related.’”

According to plaintiff’s petition, the testimony of Reimann and Lindell will show that the defendants, particularly defendant Linjer, “often overexaggerate so called gang activity” and “create ‘gang’ affiliations from benign symbols and words which in reality amount to nothing of the sort.” Reimann and Lindell are essentially offering to testify about their own previous disciplinary episodes with defendant Linjer (their affidavits do not contain any information regarding any of the other defendants in this case). However, the issue in this case is not whether the plaintiff was disciplined, but rather whether the defendants had an evil intent or were recklessly indifferent to plaintiff’s rights. Neither Reimann’s nor Lindell’s proposed testimony appears to have any relevance to that issue. Allowing either Reimann or Lindell to testify would turn plaintiff’s trial into a series of mini-trials regarding defendant Linjer’s reasons and motives for disciplining the inmates on those previous occasions. Little or no light would be shed on the motives of the defendants in disciplining plaintiff and confiscating and destroying his letter.

Finally, plaintiff indicates that he would like to call all of the defendants and several other prison officials as witnesses. He does not indicate that anyone other than proposed witnesses Jared Koutnik, Lindell and Reimann have agreed to testify voluntarily. He does not request subpoena forms for his remaining proposed witnesses. If defendants’ counsel calls the defendants as witnesses, plaintiff will have the opportunity to cross-examine

defendants. However, if plaintiff wishes to call the defendants and other prison officials who may or may not appear as witnesses for the defendants, he must either arrange with defendants' counsel to have these persons present during plaintiff's case or, if defendants' counsel is unwilling to make such arrangements, he must prepare and submit to the United States Marshal subpoenas for service upon these individuals.

ORDER

IT IS ORDERED THAT

1. Plaintiff's request for issuance of a writ of habeas corpus ad testificandum for inmate Thomas Reimann is DENIED.

2. Plaintiff's request for issuance of a writ of habeas corpus ad testificandum for inmate Nate Lindell is DENIED.

Entered this 1st day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge