

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

SHAROME ANDRE POWELL,

Plaintiff,

v.

PHIL KINGSTON and
TIM DOUMA,

Defendants.

ORDER

05-C-112-C

In an order entered in this case on March 29, 2005, I granted plaintiff leave to proceed in forma pauperis on his claim that for a period of approximately 45 days beginning in mid-October 2004, and later for another 31-day period, he was placed on a “bag meal restriction” that was nutritionally inadequate in violation of his Eighth Amendment rights. On April 19, 2005, plaintiff submitted a letter asking for a “Motion for Appointment of Counsel form.” I construe this submission as a motion for appointment of counsel and will deny it.

As an initial matter, I note that plaintiff failed to show that he sent a copy of his motion to the defendants or defendants’ counsel, if the name of counsel was known to

plaintiff, as he was directed to do in this court's order of March 29. Therefore, I am enclosing a copy to defendants' counsel with a copy of this reply.

In deciding whether to appoint counsel, I must first find that plaintiff has made reasonable efforts to find a lawyer on his own and has been unsuccessful or that he has been prevented from making such efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). Plaintiff does not say that he has been prevented from trying to find a lawyer on his own. To prove that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers that he asked to represent him in this case and who turned him down. He has not done that. Even if he had, I would not appoint counsel for him at this time.

Once a plaintiff makes the showing that he has been unsuccessful in finding a lawyer on his own, the court must consider whether the plaintiff is able to represent himself given the legal difficulty of the case, and if he is not, whether having a lawyer would make a difference in the outcome of his lawsuit. Zarnes v. Rhodes, 64 F.3d 285 (7th Cir. 1995), citing Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993). In this case, it does not appear that having a lawyer would make a difference in the outcome of plaintiff's suit. This is because defendants have now moved to dismiss plaintiff's complaint for plaintiff's failure to exhaust his administrative remedies. According to the documentation attached to defendants' motion, plaintiff did not raise in any inmate complaint his claim that the

content of the bag meals he was served during the times at issue was nutritionally inadequate. Instead, plaintiff stated expressly that he was not complaining about the content of the bag meals, but instead the fact that the time frame for imposition of the restriction exceeded that allowed by prison regulations. If evidence exists that plaintiff filed a separate inmate complaint challenging the alleged inadequacy of the nutritional value of the bag meals, he should be able to submit that documentation without the assistance of a lawyer. If no such evidence exists, a lawyer would make no difference in the outcome of the case.

ORDER

IT IS ORDERED that plaintiff Sharome Powell's motion for appointment of counsel is DENIED.

Further, IT IS ORDERED that the parties observe the following schedule for briefing defendants' motion to dismiss.

Plaintiff may have until May 23, 2005, in which to serve and file a brief in opposition to the motion, together with any documentation of exhaustion he may have.

Defendants may have until June 3, 2005, in which to serve and file a reply.

Entered this 3rd day of May, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge