

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

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LARRY GEORGE,

Plaintiff,

ORDER

v.

05-C-403-C

JUDY SMITH, MATTHEW FRANK, RUTH TRITT, JOHN RAY, MARTY SCHROEDER, CINDY O'DONNELL, OFFICER VILSKI, TIM PIERCE, RICK RAEMISCH, JENNIFER DELVAUX, SANDRA HAUTAMAKI, LT. BLODGETT, TOM EDWARDS, PATRICIA VOERMANS, MICHELLE ALBRECHT, MICHAEL BOUSHON, NURSE CARIVOU, SHARON ZUNKER, JUDY JAEGER, STEVEN CASPERSON, JIM SCHWOCHERT, SANDY HABECK, LENARD WELLS, STEVEN LANDREMAN,

Defendants.

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Plaintiff has filed a document titled "Plaintiff's Motion for Sanctions," in which he asks this court to reopen his case and reconsider the decision to grant defendants' motion for summary judgment. In his motion, plaintiff acknowledges that he is presently appealing the January 11, 2007 judgment entered in his case. Nevertheless, he asserts that he has found a letter dated November 10, 2006, authored by a Dan Westfield, "Security Chief," that he believes should have been turned over to him during the discovery phase of his case.

In particular, plaintiff contends that the letter constitutes “evidence” that would have allowed a decision in his favor on his First Amendment claim that certain specified publications were withheld from him wrongfully.

Because he seeks vacation of the judgment, I construe plaintiff’s motion for sanctions as a motion to vacate the judgment pursuant to Fed. R. Civ. P. 60(b)(3), on the ground that defendants committed fraud in failing to turn Westfield’s letter over to him during discovery. I may consider this motion without asking the court of appeals to relinquish jurisdiction over plaintiff’s appeal. Brown v. United States, 976 F.2d 1104, 1110-11 (7th Cir. 1992) (“Parties may file motions under Rule 60(b) in the district court while an appeal is pending. In such circumstances we have directed district courts to review such motions promptly, and either deny them or, if the court is inclined to grant relief, to so indicate so that we may order a speedy remand.”).

Curiously, plaintiff does not support his motion with an authenticated copy of the letter he contends was crucial to his case. Instead, he purports to quote a passage in the letter he deems significant:

The “Zero Tolerance” criteria has resulted in the denial of publications that do not promote themselves based on Security Threat Groups but display symbols, hand signs, tattoos, clothing, graffiti that may be associated with known Security Threat Groups. *The majority of these publications does [sic] not advocate or promote gang life.* The very type of materials we have denied are in many mainstream publications, television and published books that speak to the negative impact of gangs.

Even if I accept plaintiff's assertion that a security director at an unspecified institution believed in late 2006 that a "zero tolerance" policy was preventing prisoners from receiving publications that did not advocate or promote gang life, such a statement does not undermine my decision on the constitutionality of the Wisconsin Department of Corrections' regulations prohibiting prisoners from possessing materials that contain gang symbols. At most, Westfield's statement suggests that, in his opinion, the regulations may have been misapplied on occasion. However, on summary judgment, plaintiff challenged the application of the regulations prohibiting gang-related materials to three publications only: the June 2003 issue of Rolling Stone, the July 2003 issue of FHM and the March 2005 issue of FHM. After reviewing each of these publications *in camera*, I concluded that defendants acted within their discretion in concluding that certain specified gang-symbolism contained in the publications "advocate[d] . . . behavior consistent with a gang" and fell into the category of publications prohibited by Wis. Admin. Code § DOC 309.04(4)(c)(10). Nothing in the letter plaintiff contends was fraudulently withheld from him is sufficient to show that this conclusion was erroneous.

#### ORDER

Accordingly, IT IS ORDERED that plaintiff's "Motion for Sanctions," construed as

a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 60(b)(3), is DENIED.

Entered this 17th day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge