

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

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TITUS HENDERSON,

Plaintiff,

v.

MATTHEW FRANK; PETER HUIBREGTSE; BRIAN  
KOOL; TRACEY GERBER; J. STARKY; RUSSELL  
BAUSCH; ROBERT SHANNON; TODD OVERBO;  
and RICHARD SCHNEITER,

Defendants.  
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ORDER

06-C-0012-C

This case is presently scheduled for trial on March 26, 2007 on numerous constitutional claims. In preparing for trial, plaintiff has filed a document he has titled "Witness List for Trial; Affidavit of Titus Henderson." In the document, he asks the court to allow testimony at trial from Wilfredo Mediaceja and Anthony Turner, both of whom appear to be prisoners at the Wisconsin Secure Program Facility. In addition, he has attached affidavits from Joseph Green, Norman Rhodes and Alphoncy Dangerfield (whom I understand to be prisoners at the Wisconsin Secure Program Facility as well) in which they describe several events that plaintiff asserts are relevant to his claims. I understand plaintiff to be requesting the issuance of writs of habeas corpus ad testificandum for all five prisoners.

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. United States v. Solina, 733 F.2d 1208, 1213 (7th Cir. 1984).

Plaintiff has not provided information regarding any of the witnesses that persuades me that their presence and testimony at trial is necessary or relevant. First, plaintiff avers that Rhodes will testify that "defendants Bausch and Shannon had Plaintiff naked on back-of-cell restriction in [a] gown." However, Rhodes's affidavit does not bear this out. Instead, Rhodes states only that on March 6, 2004, he heard defendant Shannon tell plaintiff to go to the back of his cell, and that he could put plaintiff on back-of-cell restriction any time he wanted. Plaintiff's claims against defendants Bausch and Shannon relate to episodes of alleged fondling on July 16, 2003 and December 17, 2003. Whether defendant Shannon told plaintiff to go to the back of his cell on March 6, 2004 is irrelevant to this claim. Therefore, I will deny plaintiff's petition for a writ of habeas corpus ad testificandum with respect to Rhodes.

Next, plaintiff avers that Green and Dangerfield will testify that defendant Peter Huibregste was aware that Sergeant Sickinger regularly denied medical care to prisoners. Plaintiff offers this evidence in relation to his Eighth Amendment medical care claim against

defendant Huibregste, the deputy warden.

In their affidavits, Green and Dangerfield describe individual incidents that they believe illustrate Sickinger's refusal to provide medical care to other prisoners, but they say nothing about Huibregste's knowledge (or co-defendant Richard Schneider's knowledge) of these alleged lapses. The actual nature of Sickinger's care of prisoners, whether atrocious or excellent, is not at issue in this case because plaintiff did not name her as a defendant. The relevant question is whether Huibregste and Schneider knew that Sickinger regularly refused to provide medical care to prisoners and approved, condoned or turned a blind eye to this behavior. Without a connection between Sickinger's care and the knowledge of defendants, Green and Dangerfield's testimony is irrelevant. Accordingly, I will deny plaintiff's petition for a writ of habeas corpus ad testificandum with respect to both Green and Dangerfield.

Finally, with respect to Mediaceja and Turner, plaintiff asserts that he has been prejudiced by a change in this court's policy regarding the materials that must be submitted with a petition for writ of habeas corpus ad testificandum. However, it is not at all clear how plaintiff believes he has been prejudiced by this change in procedures. The change was slight, and did not alter what materials a party must submit in order for the court to issue a writ of habeas corpus ad testificandum. Under either the old or new version of the procedures, plaintiff's submissions fall short because he failed to submit the necessary documentation regarding the proposed witnesses' willingness to testify at trial and details about the nature of their testimony. In his own affidavit, plaintiff states that Mediaceja and

Turner would testify, respectively, about Sickinger's care of a prisoner who died at the Wisconsin Secure Program Facility and defendant Huibregste's pattern of ignoring claims of sexual assault of prisoners. These vague assertions do not provide the court with the required information regarding the relevance of the proposed witnesses' testimony or their willingness to testify at trial. Further, as with Green's and Dangerfield's proposed testimony, Mediaceja's proposed testimony (even if it is as plaintiff describes) would be irrelevant because it does not include any information regarding defendants' knowledge about Sickinger's care of prisoners and instead focuses on the quality of care itself. Turner's testimony could be relevant if he has proper foundation for it, but plaintiff has chosen to ignore the court's procedures and provided so little information to make a reasoned determination that Turner is a necessary witness impossible. Therefore, plaintiff's petition will be denied.

#### ORDER

IT IS ORDERED that plaintiff's petition for writs of habeas corpus ad testificandum for inmates Wilfredo Mediaceja, Anthony Turner, Joseph Green, Norman Rhodes and

Alphoncy Dangerfield is DENIED.

Entered this 27<sup>th</sup> day of February, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge