

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

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CARSON DARNELL COMBS,

Plaintiff,

v.

ORDER  
06-C-703-S

ALLAN BEATTY,

Defendant.

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Plaintiff Carson Combs was allowed to proceed on his claim that defendant Allan Beatty denied him his constitutional rights. In his complaint he alleges that the defendant who is the Office Supervisor of the Wisconsin State Public Defender's Office, failed to appoint him an attorney in his criminal proceeding.

Defendant filed a motion to dismiss plaintiff's complaint on January 8, 2007. This motion has been fully briefed and is ready for decision.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiffs can prove no set of facts in support of the claim which would entitle the plaintiffs to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6) a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery

under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

#### FACTS

For purposes of deciding the defendant's motion to dismiss the facts alleged in plaintiff's complaint are taken as true.

Plaintiff Carson Combs is an African-American male resident of Wisconsin. Defendant Attorney Allan Beatty is the Office Supervisor of the Sparta, Wisconsin State Public Defender's office.

On October 2, 2003 the Monroe County Circuit Court Judge, the Honorable Steven L. Abbott, appointed plaintiff counsel in his Circuit Court Case No. 03CM246. Dana Duncan was his appointed counsel.

On January 2, 2004 plaintiff discharged Attorney Duncan. Attorney Allan Betty did not assign another Public Defender to represent plaintiff in violation of state law. On April 30, 2004 Judge Abbott appointed Attorney Lyle Schaller to represent him in this case.

On January 29, 2004 Judge Abbott appointed attorney Lyle Schaller to represent him in Case No. 03CF284. Defendant Allan Beatty had initially represented plaintiff in this case.

#### MEMORANDUM

Plaintiff claims that the defendant Allan Beatty failed to appoint him counsel in his criminal case. Since the trial judge

appointed counsel for plaintiff, his Sixth Amendment right to counsel was not violated.

Plaintiff is alleging that defendant Beatty failed to assign him a state public defender. This is not a Sixth Amendment violation because it is the judge's responsibility to appoint counsel for plaintiff which he did. Plaintiff was not denied representation of counsel because Judge Abbott appointed Attorney Lyle Schaller to represent him in both cases. As a matter of law the defendant did not violated plaintiff's sixth amendment rights.

Plaintiff's allegations do not support any other Constitutional claim against defendant Beatty. Accordingly, defendant Beatty's motion to dismiss plaintiff's complaint will be granted.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

ORDER

IT IS ORDERED that defendant's motion to dismiss plaintiff's complaint is GRANTED.

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IT IS FURTHER ORDERED that judgment be entered in favor of defendant against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 12<sup>th</sup> day of January, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge