

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

LEIGHTON DWIGHT LINDSEY,

Plaintiff,

v.

CAPTAIN SALTZER, RYAN ARMSON
and JOSEPH CHICANOWICZ,

Defendants.

ORDER

10-cv-385-bbc

Plaintiff Leighton Lindsey is proceeding on his claim that defendants Captain Saltzer, Ryan Armson and Joseph Chicanowicz used excessive force against him in violation of his right to be free from cruel and unusual punishment under the Eighth Amendment. Plaintiff recently filed his third motion for appointment of counsel. Plaintiff states that he does not have the ability to litigate this case because he suffers from “mental defects,” he has no knowledge in litigation and he cannot compete with the experience of the Attorney General.

First, although plaintiff reports that he has mental health issues, plaintiff’s submissions have been coherent and well written and they demonstrate that he is able to understand and follow court instructions.

Second, as I explained in the October 28, 2010 and December 17, 2010 orders, there is nothing in the record to suggest that plaintiff’s case is factually or legally difficult or that he is incapable of gathering and presenting evidence to prove his claims. Plaintiff was the alleged victim of the excessive force, so he can testify about what he felt, saw and heard based on his first hand participation in the occurrence, and he should already possess or should be able to obtain through simple document requests or simple written questions (“interrogatories”) any follow-up information he needs about what happened that day, for instance, what the defendants’ version of events is. To do this, it might be helpful for plaintiff to re-read the

November 22, 2010 pretrial conference order carefully and do the best he can to follow the steps explained in the order to gather any additional evidence he thinks he might need. If at some point plaintiff does not understand something that is happening in this case, he is free to write to the court to ask questions about court procedures that the court will do its best to answer.

Third, it is too early to tell if plaintiff's case will go to trial. Many prisoner lawsuits are resolved before trial, usually with a dispositive motions, less often with a settlement. If this case does go to trial, then the court will issue an order about two months before the trial date describing how the court conducts a trial and explaining to the parties what written materials they are to submit before trial.

Accordingly, IT IS ORDERED that plaintiff's third motion for appointment of counsel, dkt. 44, is DENIED WITHOUT PREJUDICE.

Entered this 25th day of February, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge