

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

MUSTAFA-EL K.A. AJALA
formerly known as DENNIS E. JONES-EL,

Plaintiff,

v.

WILLIAM SWIEKATOWSKI and PETER ERICKSEN,

Defendants.

ORDER

13-cv-547-bbc

Trial is scheduled for June 8, 2015, in this case in which pro se prisoner Mustafa-El K.A. Ajala alleges that defendants William Swiekatowski and Peter Ericksen violated his Eighth Amendment rights by withholding his prescription eyeglasses for two months in 2007. Now before the court is plaintiff's petition for a writ of habeas corpus ad testificandum to allow prisoner Gesa S. Kalati, also known as Stanley Felton, to testify at trial. Dkt. #44. (Although the court received the petition three days after the May 4, 2015, deadline, plaintiff says that he gave the petition to prison officials for mailing on May 4, so I conclude that the petition is timely under the "mailbox rule." Jones v. Bertrand, 171 F.3d 499, 501 (7th Cir. 1999).)

I am denying the petition because it is deficient, both procedurally and substantively. First, plaintiff did not comply with this court's procedures, which required him to submit either (1) an affidavit from the witness stating that he was agreeing to testify for plaintiff;

(2) an affidavit from plaintiff that the “witness told the [plaintiff] that he or she is willing to testify voluntarily, that is, without being subpoenaed. The party must say in the affidavit when and where the witness informed the party of this willingness.” Dkt. #43 at 18. Although plaintiff included a statement in his affidavit that Kalati agreed to testify voluntarily, plaintiff did not say when and where Kalati made that promise.

A bigger problem is that the affidavit plaintiff filed does not show that Kalati will provide relevant testimony. Id. (“This court will not issue . . . a writ unless the party can establish to the court’s satisfaction that . . . [t]he witness has actual knowledge of facts directly related to the issue to be tried.”). The questions in this case are whether plaintiff had a serious medical need for his glasses, whether defendants were aware that he had a serious medical need and whether, despite awareness of plaintiff’s need, defendants consciously refused to take reasonable measures to help plaintiff. In his affidavit in support of his petition, plaintiff says that both he and Kalati were transferred to the Wisconsin Secure Program Facility at the same time, that “defendants” took both plaintiff and Kalati’s “property,” that both he and Kalati were interviewed on the same day and that both were “told [they would] be receiving [their] property.” Dkt. #45, ¶ 3. None of this proposed testimony could help plaintiff prove his claim.

To begin with, it is not clear from plaintiff’s affidavit whether Kalati has any personal knowledge of anything that defendants did to *plaintiff*. If plaintiff believes that Kalati should be permitted to testify simply because Kalati’s property was taken around the same time as plaintiff’s property, he is incorrect. The question in this case is whether defendants violated

plaintiff's rights, not another prisoner's. In any event, even if I assume that Kalati could testify that he heard defendants promise that they would return plaintiff's property, that testimony would provide no support for plaintiff's claim. Plaintiff must prove that defendants knew that plaintiff needed his *glasses*, but defendants refused to return them. Testimony that defendants were aware generally that plaintiff did not have his "property" would not be helpful.

Alternatively, plaintiff says that Kalati could testify that he saw plaintiff "squinting" without his eyeglasses. However, defendants do not dispute that plaintiff had a prescription for his glasses, so it adds nothing to the case to permit testimony that plaintiff had some difficulty seeing without them. To the extent that Kalati's testimony on this issue might have any probative value, I conclude that it is not sufficient to outweigh "the costs and inconvenience of transporting a prisoner from his place of incarceration to the courtroom" and "any potential danger or security risk which the presence of a particular inmate would pose to the court." Stone v. Morris, 546 F.2d 730, 735-36 (7th Cir. 1976).

ORDER

IT IS ORDERED that the petition for a writ of habeas corpus ad testificandum filed

by plaintiff Mustaf-El K.A. Ajala, formerly known as Dennis Jones-El, dkt. #44, is DENIED.

Entered this 8th day of May, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge