

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,

Defendant.

ORDER

13-cv-638-bbc

Plaintiff Mustafa-El K.A. Ajala is proceeding on a claim that defendant William Swiekatowski gave plaintiff a conduct report because of his race and religion. Trial is scheduled for August 24, 2015. Now before the court is plaintiff's motion for assistance in recruiting counsel. Dkt. #91.

Plaintiff has complied with the preliminary requirement of showing that he has made reasonable efforts to find a lawyer on his own by submitting letters from three lawyers. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). The only remaining question is whether the complexity of the case exceeds plaintiff's ability to litigate. Pruitt v. Mote, 503 F.3d 647, 653 (7th Cir. 2007).

Plaintiff does not deny that he is an experienced litigator who is well versed in both law and court procedure. He does not identify any substantive issues in this case that are too difficult for him to handle. However, he says that he needs a lawyer for two reasons: (1) he

faces difficulties contacting and prepping potential trial witnesses; and (2) he is unable to mail certain exhibits to the court, as required by the court's trial procedures. For the reasons explained below, I am not persuaded that plaintiff's concerns are sufficient grounds to provide assistance in recruiting counsel for him.

The potential witnesses are several other prisoners who received a conduct report for conduct similar to that alleged against plaintiff, who was accused by defendant of conspiring to start a prison riot. Plaintiff says that these other prisoners are "key witnesses," dkt. #91 at 2, but they are not housed at the same prison with him and he has "no means to adequately contact, effectively communicate with . . . and prep" these witnesses for trial. Dkt. # 92 at ¶ 3.

Plaintiff's arguments are not persuasive for multiple reasons. First, with respect to his ability to communicate with the witnesses, plaintiff does not argue that he is unable to obtain the prisoners' current location through defendants or other means or that he is unable to send letters to the prisoners. To the extent plaintiff means to argue that he does not have enough time to correspond with the prisoners before the August 24 trial, plaintiff does not explain why he failed to take steps to contact those prisoners before now. Plaintiff seems to believe that his discovery obligations did not begin until he received the court's summary judgment decision, but that is incorrect. Discovery began when Magistrate Judge Stephen Crocker issued the preliminary pretrial conference order more than a year ago on May 2, 2014. Dkt. #29. If plaintiff believed that a particular individual could provide relevant testimony that was helpful to his case, he should have begun his search then. If plaintiff had done that, he

would have had plenty of time to locate the witnesses and obtain agreements from them to testify.

Second, and even more important, plaintiff has not made any showing that the witnesses he identifies might have testimony that could help him prove his claim. The other prisoners could testify about whether they engaged in any misconduct, but that is not the relevant issue in this case. Rather, the primary question in this case involves *defendant's* intent in choosing to issue a conduct report to plaintiff and not to any other prisoners who were accused of engaging in similar misconduct. In other words, it does not matter whether the other prisoners *actually* engaged in misconduct; it matters only whether defendant honestly believed that they did. As discussed in the summary judgment opinion, plaintiff might be able to prove defendant's intent in part by showing that defendant chose not to discipline certain prisoners even though the evidence against them was similar to the evidence against plaintiff. However, it is highly unlikely that any of those prisoners would have personal knowledge of all the evidence that defendant possessed. Further, it is not clear how the prisoners could provide any insight into defendant's motivation.

Plaintiff's second argument is that he wants to use as exhibits video recordings of interviews defendant and other prison staff conducted with plaintiff and other prisoners. However, he says that he cannot send those recordings to the court in advance of trial "due to WSPF UPS shipping requirements for such items." Dkt. #92 at ¶ 4.

Plaintiff does not describe the nature of the "shipping requirements" that are posing a problem for him. However, even if prison policy is hindering plaintiff's ability to provide

the court advance copies of some of his exhibits, that is not a reason to appoint counsel. Instead, plaintiff should describe the requirements to the court in writing and explain how they are preventing him from sending the exhibits to the court. Also, plaintiff should explain why he believes the video recordings are relevant to his claim.

To help expedite the resolution of any potential problems, I will ask defendant to respond to this order, explaining whether he believes that prison policy is preventing plaintiff from submitting any exhibits to the court. After receiving the parties' responses, I will consider whether additional steps are necessary, such as asking defendant to submit copies of the recordings on plaintiff's behalf.

ORDER

IT IS ORDERED that

1. The motion filed by plaintiff Mustafa-El K.A. Ajala, formerly known as Dennis Jones-El, for assistance in recruiting counsel, dkt. #91, is DENIED.
2. Plaintiff may have until July 23, 2015 to file a document with the court that includes the following information: (1) a description of the shipping requirements that plaintiff mentioned in his motion; (2) an explanation of how those requirements are preventing him from sending exhibits to the court; and (3) an explanation of how the video recordings he wants to submit are relevant to this case. If plaintiff does not respond by July 23, 2015, I will consider any interest he had in presenting the recordings as exhibits to be forfeited.

3. Defendant William Swiekatowski may have until July 23, 2015 to state his position on whether prison policy is interfering with plaintiff's ability to submit exhibits to the court. If defendant is aware of any problem caused by prison policy, he should identify potential solutions to the problem in his response.

Entered this 9th day of July, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge