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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DESHA M. CARTER,

Plaintiff,

v.

S. BUTLER, et al.,

Defendants.

CASE NO. 1:05-cv-01057 LJO DLB PC

ORDER DENYING REQUEST FOR
CONTINUANCE OF TRIAL

(Doc. 73)

Plaintiff Desha M. Carter (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is set for jury trial commencing on January 19, 2010. On December 29, 2009, Plaintiff filed a motion requesting that the trial dated be postponed for sixty days. Plaintiff states that he will be released from prison eleven days after the trial, and that the additional time will allow Plaintiff to obtain counsel.

At the pretrial conference on December 15, 2009, the Court granted Plaintiff’s request to make one phone call to attorney Quentin B. Simms. This phone call was solely for the purpose of Plaintiff possibly obtaining representation in time for trial. According to Plaintiff, he made this phone call at approximately 9:15 AM on December 17, 2009. Plaintiff complains that prison officials should have permitted Plaintiff to call at 10 AM, what Plaintiff describes as a “functioning hour.” Plaintiff was only able to reach the answering machine.

Reaching only the answering machine is not good cause for postponement of this trial. Plaintiff was fully capable of leaving a message for Mr. Simms to ascertain if he was willing to represent Plaintiff in this case. The Court warned Plaintiff that this trial would be postponed only

1 if Mr. Simms submitted a written declaration to the court by December 21, 2009 stating that he was
2 now representing Plaintiff in this action. No such declaration has been filed.

3 Plaintiff contends that there is no harm in postponing the trial for sixty days after Plaintiff's
4 release, since the Court would postpone the trial if counsel had been obtained. This argument
5 ignores the fact that this case has been pending before the Court since 2005. Plaintiff has had other
6 opportunities to seek counsel prior to the trial date and was unsuccessful. Plaintiff offers no good
7 cause for postponement now. In addition, this Court is double and triple booked with other jury
8 trials up to and including April of 2011, some fifteen months from now.

9 Based on the foregoing, it is HEREBY ORDERED that Plaintiff's request for a continuance
10 of trial to obtain counsel, filed on December 29, 2009, is DENIED with prejudice.

11 IT IS SO ORDERED.

12 **Dated: January 4, 2010**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE