

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JARMAAL LARONDE SMITH,

Plaintiff,

Case No. 2:07-cv-00964 ALA (P)

vs.

LEANN CRONES, et al.,

ORDER

Defendants.

\_\_\_\_\_ /

On August 28, 2009, Plaintiff filed a reply (doc. 85) to Warden Mike McDonald’s response to this Court’s subpoena duces tecum served on Warden Mike McDonald. (Doc 70.) The subpoena demanded that Warden McDonald produce “All documents from personnel files of Officers Edward Simmerson and Scott Norton that concern or relate to: the alleged Jan.12, 2006 assault on Inmate Jarmaal Smith, as documented in CDC 602 inmate grievance log no. HDSP3-06-248; any investigation into this alleged assault; any adverse action taken against either officer for excessive use of force” by mailing them to Plaintiff by August 10, 2009.

In his reply, Plaintiff argues that documents relating to the grievance he filed indicate that an investigation was conducted into the alleged January 12, 2006 assault on Plaintiff. Attached as Plaintiff’s Exhibit A to Plaintiff’s reply is a memorandum dated March 1, 2006 concerning Plaintiff’s Appeal Log #HDSP-Z-06-00248, First Level Response, wherein Associate Warden R.

1 K. Wong indicated that Plaintiff's "request to have [his] allegations investigated is granted."  
2 (Doc. 85, Exh. A). Also attached is a memorandum dated May 3, 2006, signed by  
3 "Warden/CDW/HCM (Second Level) AW/Med. Mgr. (First Level) [signature illegible],  
4 indicating that an investigation was conducted into Plaintiff's grievance concerning the alleged  
5 assault that is the subject of this lawsuit and that four correctional officers, including Officers  
6 Norton and Simmerson, were interviewed as part of that investigation. *Id.* Plaintiff's appeal was  
7 partially granted and that "results of any inquiry/investigation will not be shared with staff,  
8 members of the public, or inmates." *Id.* Also attached is a memorandum entitled Director's  
9 Level Appeal Decision, dated September 14, 2006 and signed by Inmate Appeals Branch Chief,  
10 N. Grannis. It states as follows:

11 III. Director's Level Decision: Appeal is denied.

12 A. Findings: Upon review of the documentation submitted, it is  
13 determined that the appellant's allegations have been reviewed and  
14 evaluated by administrative staff, and an appeals inquiry has been  
15 completed. The appellant has been transferred to the California State  
16 Prison, Sacramento (SAC) since filing this appeal. The finding of the staff  
17 complaint inquiry is confidential and will not be disclosed. There is no  
18 avenue in the inmate appeals process to award monetary compensation.

17 *Id.* Thus, Plaintiff argues, "[d]ocumentation of an investigation into this matter exist somewhere  
18 within High Desert State Prison even if the documentation is not located within officers Norton  
19 and Simmerson's personnel files." *Id.* This Court tends to agree.

20 The attached subpoena duces tecum requests "All documents that concern or relate to any  
21 investigation into the alleged January 12, 2006 assault on Inmate Jarmaal Smith, as documented  
22 in CDC 602 inmate grievance log no. HDSP3-06-248 and related appeals, including any adverse  
23 action that was taken against either officer for excessive use of force, regardless of where such  
24 documents are located." Warden McDonald is **ORDERED** to produce any and all documents  
25 responsive to the attached subpoena directly to the Court for *in camera* review by the Court, on  
26 or before September 4, 2009. Any responsive documents should not be filed on the CM/ECF

1 system, but should be delivered to the Court "UNDER SEAL." Failure to comply with this  
2 Court's order may result in sanctions.

3 The Clerk of this Court is ordered to send a copy of this order, along with the attached  
4 subpoena duces tecum to:

5 Mike McDonald, Warden  
6 High Desert State Prison  
7 P.O. Box 750  
8 Susanville, CA 96127-0750

8 The Clerk of this Court is ordered to forward all copies of these sealed documents, upon  
9 receipt from Warden McDonald, to the Chamber of Judge Alarcón for *in camera* review.

10 ////

11 DATED: August 28, 2009

12 /s/ Arthur L. Alarcón  
13 UNITED STATES CIRCUIT JUDGE  
14 Sitting by Designation  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26