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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JIMMIE STEPHEN, Plaintiff, v. E. MONTEJO, Defendant

No. 2:18-cv-1796 KJM DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action. He alleges defendant was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Before the court are plaintiff’s request to dismiss his claim regarding treatment for chronic kidney disease (“CKD”), defendant’s request to stay briefing on plaintiff’s motion for summary judgment, and plaintiff’s request for the appointment of counsel.

DISMISSAL OF CKD CLAIM

In his motion for summary judgment, plaintiff states that he is voluntarily dismissing his claim regarding treatment for CKD. (ECF No. 105 at 4, 10; see also ECF No. 109 at 3.) Defendant does not oppose dismissal of that claim. Accordingly, plaintiff’s claim regarding the treatment for CKD will be dismissed. This case will proceed solely on plaintiff’s Eighth Amendment claim that defendant was deliberately indifferent in his detection and treatment of plaintiff’s prostate cancer.

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1 The United States Supreme Court has ruled that district courts lack authority to require
2 counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490
3 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the
4 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d
5 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

6 The test for exceptional circumstances requires the court to evaluate the plaintiff's
7 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
8 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
9 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
10 common to most prisoners, such as lack of legal education and limited law library access, do not
11 establish exceptional circumstances that would warrant a request for voluntary assistance of
12 counsel. While the court is not unsympathetic to the difficulties prisoners face in litigating in
13 court, plaintiff appears able to articulate his claims. Further, plaintiff's problems of library access
14 and hiring experts are faced by most prisoners. They are not unique to plaintiff. Plaintiff has not
15 shown he faces exceptional circumstances that would justify an attempt by this court to locate
16 counsel willing and able to take plaintiff's case. Plaintiff's motion will be denied.

17 For the foregoing reasons, IT IS HEREBY ORDERED as follows:

- 18 1. Plaintiff's request to dismiss his claim based on treatment for chronic kidney disease is
19 granted. That claim is dismissed from this action.
- 20 2. Defendant's motion (ECF No. 107) to stay briefing on plaintiff's motion for summary
21 judgment is granted. Defendant's opposition to plaintiff's motion shall be filed by July 22, 2022.
- 22 3. Plaintiff's motion for the appointment of counsel (ECF No. 108) is denied.

23 Dated: January 28, 2022

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

27 DLB:9/DB prisoner inbox/civil rights/R/step1796.msaj stay