

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 12-cv-01921-PAB-KMT

DELMART E.J.M. VREELAND, II,

Plaintiff,

v.

SERGEANT GRIGGS, CDOC/BVCF Mailroom,

Defendant.

ORDER

This matter is before the court on Plaintiff's "Motion for Leave to Present Newly Obtained Evidences and Facts in Support of Plaintiff's Response in Opposition to Defendant's Motion and Amended Motion for Summary Judgment" (Doc. No. 220 [Mot.], filed August 5, 2015).

Defendant filed his response on August 10, 2015 (Doc. No. 224) and an Amended Response on August 13, 2015 (Doc. No. 234).

Defendant filed a Motion for Summary Judgment on November 14, 2014, which was amended on November 17, 2015. (Doc. No. 165). Plaintiff filed his response to the Motion for Summary Judgment on April 17, 2015. (Doc. No. 213.) In the present motion, Plaintiff alleges that he has recently obtained two new pieces of evidence to include: (1) the victim forms submitted by Defendant as Exhibit A-8 of the amended Motion for Summary Judgment; and (2) a CD with a true and exact copy of the records mailed to Plaintiff in 2010 by attorney Michael Heher. Plaintiff wishes to supplement his response to Defendant's Motion for Summary Judgment.

To the extent Plaintiff seeks to supplement his response regarding his claims involving the handling of his mail in June 2012, this court did not address these claims on the merit in its Recommendation that Defendant's Motion for Summary Judgment be granted because it determined Plaintiff did not exhaust his administrative remedies as to those claims. (See Doc. No. 237 at 7.) Thus, there is no reason for Plaintiff to supplement his response as to those claims.

Plaintiff also wishes to supplement his response regarding the August 2010 claims based on a CD that was allegedly was mailed to Plaintiff by his new attorney, Patrick Mulligan, on July 30, 2015. Plaintiff maintains that the CD contains an exact copy of the records mailed to him by attorney Michael Heher in August of 2010, and that the CD was inspected by prison officials for contraband without any contraband having been discovered. According to Plaintiff, this demonstrates that the records mailed to him in 2010 did not contain security sensitive information and, therefore, the twelve pages of documents that were rejected as contraband were rejected for unjust cause.

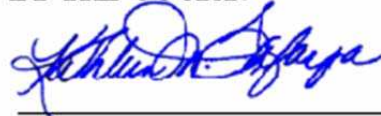
The court agrees with Defendant that Plaintiff provides no admissible or competent evidence demonstrating that CD he received on July 30, 2015, contains an exact copy of the documents mailed to him five years earlier by a different attorney. First, Plaintiff has no personal knowledge of the exact nature of all the documents mailed to him by his attorney in August of 2010. As demonstrated by the evidence, Plaintiff was not permitted to possess the twelve pages of documents confiscated by Ms. Schwartz as contraband during her review of the materials mailed to Plaintiff by his attorney. (Doc. No. 165-6, ¶ 15-19; Doc. 165-7, ¶ 10-12.) As such, Plaintiff cannot competently attest as to whether the materials mailed to him in July 2015 by Mr.

Mulligan are identical in nature to the materials mailed to him five years prior by Mr. Heher. Finally, at the time Plaintiff filed this motion on July 31, 2015, Plaintiff had not even viewed the materials contained on the CD mailed to him on July 30, 2015. Plaintiff first viewed the CD in the facility law library on August 3, 2015, three days after he filed his motion. (*See* Doc. No. 224, Attach. 3 [CTCF Log Offender Access to Electronic Materials].) Thus, at the time Plaintiff submitted his motion, he lacked any knowledge as to the contents contained on the CD referenced in his motion.

Accordingly, Plaintiff's "Motion for Leave to Present Newly Obtained Evidences and Facts in Support of Plaintiff's Response in Opposition to Defendant's Motion and Amended Motion for Summary Judgment" (Doc. No. 220) is **DENIED**.

Dated this 1st day of September, 2015.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge