

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

RODNEY D. ZEUNE,

Plaintiff,

v.

Civil Action 2:14-cv-153

Judge Edmund A. Sargus

Magistrate Judge Elizabeth P. Deavers

GARY MOHR, *et al.*,

Defendants.

OPINION AND ORDER

This matter is before the Court for consideration of Plaintiff's Motion for Service of Subpoenas. (ECF No. 18.) To date, Defendants have not responded to Plaintiff's Motion. Plaintiff requests that the Court order the United States Marshals Service to serve subpoenas *duces tecum* on the Franklin County Prosecutors' Office, Franklin County Prosecutor Ron O'Brien, Assistant Prosecutor Jennifer Hunt, Janey Carroll of the Drug Enforcement Administration, John F. Bender, and the Franklin County Common Pleas Court. In each subpoena, Plaintiff requests all evidence, materials, and communications regarding his state-court criminal case, *State v. Zeune*, Case No. 09 CR 4919. (*See* ECF No. 1-1.) For the reasons that follow, Plaintiff's Motion is **DENIED**.

Because Plaintiff is proceeding *in forma pauperis*, "[t]he officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases." 28 U.S.C. § 1915(d). This provision requires the Marshals Service to serve an indigent party's subpoena *duces tecum*. Nevertheless,

[w]hile 28 U.S.C. § 1915(d) mandates officers of the court to issue and serve all process in IFP cases, a plaintiff who is proceeding *in forma pauperis* should only be entitled to subpoena witnesses after the Court determines the relevancy of the requested documents or testimony and the ability of the plaintiff to pay a witness fee, mileage and other costs, if applicable.

Hughes v. Lavender, No. 2:10-cv-674, 2011 WL 3236476, *1 (S.D. Ohio July 28, 2011). Thus, a court may exercise its discretion to screen such a subpoena request, relieving the Marshals Service of its duty when appropriate. *See* 9A C. Wright & A. Miller, Federal Practice and Procedure § 2454, p. 244-46 n. 21 (3d ed. 2010) (citations omitted).

In the instant case, the Court finds circumstances warranting an exception to the Marshals Service's statutory duty under Section 1915(d). Plaintiff brings this action under 42 U.S.C. § 1983, alleging that Defendants conspired to withhold his mail in an attempt to defeat his appeal for post-conviction relief. As the Court explained in its April 11, 2014 Report and Recommendation, if Plaintiff intends to challenge the fact or duration of his confinement, his only remedy is to file a habeas corpus action. (Report and Recommendation 5-6, ECF No. 9.) The Court will not, therefore, address any issues related to the fact or duration of Plaintiff's conviction in the instant civil rights action. In his subpoenas *duces tecum*, Plaintiff requests the evidence, materials, and communications from his state-court criminal case. (ECF No. 1-1.) This information is not relevant to Plaintiff's claim that Defendants conspired to withhold his mail to defeat his appeal. Plaintiff is not entitled to subpoena witnesses for information that is not relevant to his case. *See Hughes*, 2011 WL 3236476, at *1 (“[A] plaintiff who is proceeding *in forma pauperis* should only be entitled to subpoena witnesses after the Court determines the relevancy of the requested documents or testimony . . .”). Accordingly, Plaintiff's Motion to Serve Subpoenas is **DENIED**.

IT IS SO ORDERED.

Date: October 27, 2014

/s/ Elizabeth A. Preston Deavers
Elizabeth A. Preston Deavers
United States Magistrate Judge