

United States District Court
Southern District of Texas

ENTERED

October 13, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

DAMON EARL LEWIS,

Plaintiff,

VS.

MCCONNELL UNIT, *et al*,

Defendants.

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CIVIL ACTION NO. 2:16-CV-124

**OPINION AND ORDER GRANTING MOTION FOR LEAVE TO FILE MOTION
FOR APPOINTMENT OF COUNSEL AND DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

Plaintiff's motion for leave to file a motion for appointment of counsel (D.E. 30) is granted.

Plaintiff is an inmate in the Texas Department of Criminal Justice - Institutional Division, currently assigned to the McConnell Unit in Beeville, Texas. Proceeding *pro se* and *in forma pauperis*, plaintiff filed a civil rights complaint pursuant to 42 U.S.C. § 1983, alleging that defendants/prison officials at the McConnell Unit in Beeville, Texas, were impermissibly denying him access to materials he ordered through the mail (D.E. 1). Plaintiff claims he needs these materials to fight his state court conviction (*Id.*). Pending is plaintiff's motion for appointment of counsel (D.E. 31).

In *Bounds v. Smith*, the Supreme Court held that a prisoner's constitutional right of access to the courts requires that the access be meaningful; that is, prison officials must provide pro se litigants with writing materials, access to the law library, or other forms of legal assistance. *Bounds v. Smith*, 430 U.S. 817, 829 (1977). There is, however, no

constitutional right to appointment of counsel in civil rights cases. *Akasike v. Fitzpatrick*, 26 F.3d 510, 512 (5th Cir. 1994); *Branch v. Cole*, 686 F.2d 264, 266 (5th Cir. 1982). Further, *Bounds* did not create a "free-standing right to a law library or legal assistance." *Lewis v. Casey*, 116 S. Ct. 2174, 2180 (1996). It is within the court's discretion to appoint counsel, unless the case presents "exceptional circumstances," thus requiring the appointment. 28 U.S.C. § 1915(e)(1); *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987).

A number of factors should be examined when determining whether to appoint counsel. *Jackson v. Dallas Police Department*, 811 F.2d 260, 261-62 (5th Cir. 1986) (citing *Ulmer v. Chancellor*, 691 F.2d 209 (5th Cir. 1982)). The first is the type and complexity of the case. *Id.* This case is not complex. According to plaintiff, Defendants are denying him access to materials he needs to challenge his state court conviction. Though serious, plaintiff's allegations are not complex.

The second and third factors are whether the plaintiff is in a position to adequately investigate and present his case. *Id.* Plaintiff's testimony at the evidentiary hearing and his pleadings demonstrate he is reasonably articulate and intelligent. Plaintiff appears, at this early stage of the case, to be in a position to adequately investigate and present his case.

The fourth factor which should be examined is whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross-examination. *Id.* Examination of this factor is premature because the case has not yet been set for trial. Dispositive motions have not yet been filed.

Finally, there is no indication that appointed counsel would aid in the efficient and

equitable disposition of the case. The Court has the authority to award attorneys' fees to a prevailing plaintiff. 42 U.S.C. § 1988. Plaintiff is not prohibited from hiring an attorney on a contingent-fee arrangement. Plaintiff's motion for appointment of counsel (D.E. 31) is denied without prejudice at this time. This order will be *sua sponte* reexamined as the case proceeds.

ORDERED this 13th day of October, 2016.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE