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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KYLE LYDELL CANTY,

Plaintiff,

v.

CITY OF SEATTLE, *et al.*,

Defendants.

Case No. C16-1655-RAJ-JPD

ORDER RE: PLAINTIFF’S PENDING
MOTIONS

This is a civil rights action proceeding under 42 U.S.C. § 1983. This matter comes before the Court at the present time on eight of plaintiff’s pending motions: (1) Motion to Suppress Defendants [sic] Evidence of a Bench Trial Guilty Verdict Not Pertaining to Cause No. 16-1-03103-6 SEA (Dkt. 79); (2) Motion and Notice of Policies and Procedures Pursuant to Civil Commitment [sic] (Dkt. 80); (3) Emergency Motion Pursuant to Qualified Immunity Plaintiff’s Response to All Defendants (Dkt. 82); (4) Motion Pursuant to Question of Law (Dkt. 85); (5) Consolidated Notice and Motion Pursuant to Sixth Amend [sic] Rights Violations of U.S. Const./Foul Play/Habeas Corpus/Excessive Force (Dkt. 86); (6) Emergency Motion Pursuant to 42 U.S.C. 1997d Prohibition of Retaliation (Dkt. 102); (7) Proposed Motion of Appointment of

ORDER RE: PLAINTIFF’S PENDING
MOTIONS - 1

1 Counsel with Writ (Dkt. 103); and, (8) Motion Pursuant to “Access to the Law” Intentional
2 Refusal on the Behalf of the Washington State Department of Corrections (Dkt. 104).

3 Defendants have filed responses to the various motions addressed in this Order. (*See* Dkts 93,
4 95, 106, 108 and 115.) The Court, having reviewed plaintiff’s motions, the responses thereto,
5 and the balance of the record, hereby finds and ORDERS as follows:

6 (1) Plaintiff’s Motion to Suppress Defendants [sic] Evidence of a Bench Trial Guilty
7 Verdict Not Pertaining to Cause No. 16-1-03103-6 SEA (Dkt. 79) is DENIED. Plaintiff asks that
8 defendants be precluded from using as evidence in this action his recent conviction for assaulting
9 two police officers. The instant motion was apparently prompted by the King County
10 defendants’ reference to that guilty verdict in its response to plaintiff’s motion for injunctive
11 relief. Plaintiff contends that his recent conviction is unrelated to the criminal case which gives
12 rise to the claims in this civil rights action, and that it is improper for defendants to rely on such
13 evidence in this matter.

14 Defendants argue that plaintiff’s request for an evidentiary ruling is premature, and that
15 plaintiff has cited no authority supporting the suppression of evidence of this type. Defendants
16 are correct. Plaintiff identifies nothing improper in the King County defendants’ reference to the
17 guilty finding in their response to plaintiff’s motion for injunctive relief. The Court declines to
18 speculate on whether such evidence might be admissible in another context during the course of
19 these proceedings.

20 (2) Plaintiff’s Motion and Notice of Policies and Procedures Pursuant to Civil
21 Commitment [sic] (Dkt. 80), and his Emergency Motion Pursuant to Qualified Immunity
22 Plaintiff’s Response to All Defendants (Dkt. 82), are STRICKEN. These two motions appear to
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1 constitute yet another attempt by plaintiff to respond to the contents of the answers filed by
2 defendants earlier in this action. (*See* Dkts. 60, 64.) However, as plaintiff was previously
3 advised, a response to an answer to a civil complaint is not a proper pleading and is only
4 permitted when specifically ordered by the Court. *See* Fed. R. Civ. P. 7(a)(7). The Court sees no
5 need for such responses in this case. To the extent these motions might properly be construed as
6 requests for summary judgment, the submissions are deficient because plaintiff fails to properly
7 support any of the assertions of fact set forth therein. *See* Fed. R. Civ. P. 56(e). If plaintiff
8 wishes to seek summary judgment on any of the claims asserted in his second amended
9 complaint, he must submit a properly identified dispositive motion which fully complies with
10 Fed. R. Civ. P. 56, LCR 7(b)(1), and LCR 7(d)(3).

11 (3) Plaintiff's Motion Pursuant to Question of Law (Dkt. 85) is DENIED. The
12 purpose of the instant motion is not clear. Plaintiff makes reference to a default judgment he
13 claims to have filed against King County, but which was never received by the Court. He also
14 appears to take issue with the manner in which the King County defendants have characterized
15 the criminal charges which were dismissed in King County Superior Court and which gave rise
16 to this lawsuit. The relief plaintiff requests in this motion is that he be allowed to bring
17 defendants to justice and to proceed to trial, that all of his motions be granted, and that all future
18 motions be noted on the calendar for oral argument. Plaintiff has not established in his motion
19 any clear connection between his complaints about the King County defendants and the relief he
20 seeks. Moreover, the relief plaintiff appears to seek is entirely improper. Plaintiff is advised that
21 the question of whether he will be permitted to proceed to trial is premature, that he will be
22 granted relief only when the motions he submits demonstrate an entitlement to the requested
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1 relief, and that he will be bound by LCR 7(b)(4), as are all litigants in this Court, to indicate his
2 desire for oral argument in the caption of each motion he submits for consideration.

3 (4) Plaintiff's Consolidated Notice and Motion Pursuant to Sixth Amend [sic] Rights
4 Violations of U.S. Const./Foul Play/Habeas Corpus/Excessive Force (Dkt. 86) is DENIED.
5 Plaintiff identifies in the instant motion various complaints he has about his recently completed
6 criminal proceedings in King County Superior Court. However, as plaintiff himself has noted in
7 other submissions, the claims asserted in this action relate entirely to a previous prosecution on
8 unrelated charges and have nothing at all to do with plaintiff's recent conviction. The purpose of
9 the instant motion is therefore unclear. Moreover, to the extent plaintiff seeks relief in the form
10 of admission into the Federal Witness Protection Program, he has requested relief beyond the
11 scope of what this Court can provide. And, to the extent plaintiff seeks release from the King
12 County Correctional Facility, his request is moot because he has already been transferred into the
13 custody of the Washington Department of Corrections.

14 (5) Plaintiff's Emergency Motion Pursuant to 42 U.S.C. 1997d Prohibition of
15 Retaliation (Dkt. 102) is STRICKEN. The instant motion consists of a single page containing
16 nothing but a caption. Plaintiff offers no argument, nor does he make any request for relief.
17 Plaintiff attached to his motion 240 pages of exhibits, all of which appear to relate to his most
18 recent criminal prosecution which, as noted above, is wholly unrelated to this action. The instant
19 motion utterly fails to comply with Fed. R. Civ. P. 7(b)(1), and, thus, the Court need not address
20 it further.

21 (6) Plaintiff's Proposed Motion of Appointment of Counsel with Writ (Dkt. 103) is
22 DENIED. There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983.

1 Although the Court, under 28 U.S.C. § 1915(e)(1), can request counsel to represent a party
2 proceeding *in forma pauperis*, the Court may do so only in exceptional circumstances. *Wilborn*
3 *v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236
4 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional
5 circumstances requires an evaluation of both the likelihood of success on the merits and the
6 ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues
7 involved. *Wilborn*, 789 F.2d at 1331.

8 Plaintiff argues in his motion that he should not be forced to proceed by himself in this
9 action because he has never passed the Washington State Bar Exam. He also cites to difficulties
10 associated with litigating this action while confined in a state correctional facility and while
11 indigent. Lack of legal training and lack of financial resources do not constitute exceptional
12 circumstances sufficient to warrant appointment of counsel. In fact, these are circumstances
13 faced by the vast majority of *pro se* litigants.

14 A significant number of *pro se* litigants also file and litigate actions from within the
15 confines of correctional facilities. While this unquestionably presents challenges, it does not
16 establish an entitlement to court appointed counsel particularly where, as here, plaintiff has
17 clearly demonstrated an ability to articulate the legal and factual bases of his claims without the
18 assistance of counsel. Plaintiff contends that he has been denied any “access to the law” at his
19 current facility, but a review of the record suggests that plaintiff has been afforded some access
20 to the prison law library and/or to a legal computer, he simply deems that access insufficient.
21 (*See* Dkt. 104 at 3, 7.) Whether or not plaintiff is satisfied with the amount of legal access he has
22 thus far received, he makes no showing that the purportedly limited access has interfered with his
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1 ability to litigate this action. Should the limitations on plaintiff's law library access at some
2 point interfere with his ability to meet court imposed deadlines, plaintiff may request an
3 extension of specific deadlines by filing a proper motion for relief.

4 Finally, with respect to plaintiff's likelihood of success on the merits of his claims, the
5 record is not yet sufficiently developed for this Court to make such a determination. Based on
6 the information available to the Court at this juncture, this Court must conclude that plaintiff has
7 not demonstrated that his case involves exceptional circumstances which warrant the
8 appointment of counsel.


9 (7) Plaintiff's Motion Pursuant to "Access to the Law" Intentional Refusal on the
10 Behalf of the Washington State Department of Corrections (Dkt. 104) is DENIED. Plaintiff
11 asserts that he has been denied access to the law at his current facility, the Washington
12 Corrections Center (WCC), in violation of institutional policy and the United States Constitution.
13 He asks that a "writ" be issued granting him unlimited access to the law, law books, paper,
14 envelopes, and other legal supplies. However, the Washington Department of Corrections is not
15 a party to this law suit and the Court therefore has no authority to direct its actions. Thus, this
16 Court is unable to provide the relief plaintiff seeks by way of the instant motion.

17 The Court does note, however, that for purposes of litigating this action, plaintiff's need
18 for legal supplies should be relatively limited as he is subject to the mandatory e-filing
19 requirements applicable to all inmates in the custody of the Department of Corrections and, thus,
20 he should need access only to paper and a writing implement. The sheer volume of plaintiff's
21 submissions to date, many of which have questionable relevance to the claims he seeks to litigate
22 in this action, belie any assertion that he lacks access to these basic resources. Moreover, it

1 appears that plaintiff has been granted some access to the prison law library and/or a legal
2 computer, albeit not as much as he would prefer. As noted above, if plaintiff finds himself
3 unable to meet Court imposed deadlines because of limitations on his access to legal materials,
4 the Court can adjust such deadlines upon submission of an appropriate request for relief which
5 includes a showing of good cause.

6 (8) The Clerk is directed to send copies of this Order to plaintiff, to counsel for
7 defendants, and to the Honorable Richard A. Jones.

8 DATED this 5th day of October, 2017.

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11 JAMES P. DONOHUE
12 Chief United States Magistrate Judge
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