IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BENTURA MARTINEZ,

Plaintiff,

v.

C.O. II P. JANUS,

Defendant.

ORDER

09-cv-607-wmc

On February 2, 2010, Magistrate Judge Stephen Crocker issued a text order taking no action on Martinez's concerns that prison staff had confiscated some of his legal materials because (1) the institution did not find any evidence that staff had confiscated the materials and (2) there was no record of Martinez having complained about missing legal materials. Martinez moved, and Judge Crocker denied his motion, for reconsideration, finding that Martinez failed to show how prison staff violated his access to the courts by confiscating his legal materials from another inmate, Oscar McMillian.

Pursuant to 28 U.S.C. § 636(b)(1)(A), Martinez now asks the court to overturn the magistrate judge's February 2, 2010 order. To prevail, Martinez must show that the magistrate's order is clearly erroneous or contrary to law. *Id.*

Martinez continues to argue that he was denied access to the courts because his legal materials were seized from inmate Oscar McMilliam, who was helping him prosecute his case. The magistrate judge, however, explained that plaintiff chose to give his legal materials to McMillian and that they were subsequently confiscated from McMillian was not a problem that required court intervention, especially when Martinez had already been admonished in the initial screening order to keep a copy of his documents for his own files. Martinez has not shown that

the magistrate judge's decision was clearly erroneous or contrary to law. Thus, his motion for reconsideration will be denied.

To the extent Martinez needs additional time or assistance as the result of loss of materials, his remedy, as the Magistrate pointedly stated in his order on reconsideration, is to "request a brief continuance," something is appears Martinez has still failed to do.

ORDER

It is ORDERED that plaintiff's motion for reconsideration of Magistrate Judge Stephen Crocker's February 2, 2010 order, dkt. #16, is DENIED.

Entered this 22nd day of July, 2010.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge