

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Keen v. Cross

Keen · No. 2:24-cv-0299-JDP (P) · Decided May 22, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Brandon Keen’s motion to obtain video evidence and motion for appointment of counsel in his 42 U.S.C. § 1983 action. The court held that discovery requests must be served on the opposing parties rather than filed with the court and found that Keen had not demonstrated exceptional circumstances warranting appointed counsel.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 BRANDON KEEN, Case No. 2:24-cv-0299-JDP (P) 12 Plaintiff, 13 v.
ORDER 14 CROSS, et al., 15 Defendants. 16 17 18 Plaintiff, a state inmate proceeding pro se,
brought this § 1983 action against defendants 19 Cross and Wallace, alleging that they violated his
Eighth Amendment rights when they were 20 aware plaintiff had set a fire in his cell, but failed to
help him.

ECF No. 1. Now pending before 21 the court are plaintiff’s motion to obtain video evidence, ECF
No. 40, which defendants oppose, 22 ECF No. 41, and motion to appoint counsel, ECF No. 39. I
will deny both plaintiff’s motions. 23 Motion to Obtain Video Evidence 24 Plaintiff moves to
obtain “all video evidence” in this matter, and he requests all body 25 camera footage from
defendants.

ECF No. 40. Defendants oppose plaintiff’s request, arguing 26 that plaintiff’s request is
procedurally improper and untimely. ECF No. 41.1 27 1 In their opposition, defendants argue that
plaintiff’s motion is untimely, as the date to 28 serve discovery requests has passed and plaintiff
has not asked for an extension of time to make 1 On February 20, 2025, I issued the scheduling
order in this case, in which I informed both 2 parties that discovery requests must be served by the
party seeking discovery on all parties to the 3 action.

ECF No. 35 at 5. I warned that discovery requests should not be filed with the court 4 unless
required by Local Rules. Id. As it currently stands, no Local Rule requires this court to 5 review
plaintiff’s discovery request, and, as I have previously informed plaintiff, see ECF No. 17, 6 court
permission is not necessary for discovery requests. Additionally, to the extent that plaintiff 7

intended to serve defendants with his discovery request by filing them with the court, that approach is improper.

Plaintiff must serve his discovery requests on defendants. See Fed. R. Civ. P. 30-36. As such, I deny plaintiff's request for video evidence. 10 Motion for Appointment of Counsel 11 Plaintiff moves for appointment of counsel, generally alleging that he needs counsel to 12 assist him in bringing this case due to his lack of legal knowledge and mental health issues.

ECF 13 No. 39. District courts lack authority to require counsel to represent indigent prisoners in § 1983 14 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional 15 circumstances, the court may ask an attorney to voluntarily represent such a plaintiff. See 28 16 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.

1991); *Wood v. 17 Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether "exceptional 18 circumstances" exist, the court must consider plaintiff's likelihood of success on the merits as 19 well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the 20 legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir.

2009) (district court did not 21 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional 22 circumstances is on the plaintiff. *Id.* Plaintiff has failed to meet his burden of demonstrating 23 exceptional circumstances warranting the appointment of counsel at this time, and I deny his 24 motion. 25 26 27 discovery requests. ECF No. 41 at 4-5.

Because I am denying plaintiff's motion for video evidence as procedurally improper, this order makes no findings on the timeliness of plaintiff's 28 purported discovery requests. 1 Conclusion 2 Accordingly, it is ORDERED that: 3 1. Plaintiffs motion to obtain video evidence, ECF No. 40, is DENIED. 4 2. Plaintiff's motion for appointment of counsel, ECF No. 39, is DENIED.

5 6 IT IS SO ORDERED. Dated: _ May 22, 2025 q—— 8 JEREMY D. PETERSON 9 UNITED STATES MAGISTRATE JUDGE 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28