

**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

OPINION

(PC) Keen v. Cross

PER CURIAM.

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 8 approach is improper. Plaintiff must serve his discovery
requests on defendants. See Fed. R. Civ. 9 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