

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

KENNETH T. DEPUTY,)
)
Plaintiff,)
) C.A. No. 07C-01-202 MMJ
v.)
)
DR. CONLAN, JAMES WELCH,)
and THOMAS CARROLL,)

Defendants.

Submitted: December 5, 2007
Decided: February 13, 2008

On Plaintiff's Motion for Appointment of Counsel. **DENIED.**

ORDER

Kenneth T. Deputy, Plaintiff, *Pro Se*

JOHNSTON, J.

1. Deputy is incarcerated in the Delaware Correctional Center in Smyrna. In 2001, Deputy sustained an injury to his left shoulder while in prison. In 2005, an M.R.I revealed he was suffering from a torn rotator cuff. Deputy alleges the treating physician recommended he receive surgery. Deputy claims he has not received the recommended surgery and continues to experience pain in his shoulder. In January 2007, Deputy filed a civil suit against the prison health administrator, medical director and the warden, for intentional delay and mistreatment of his ongoing medical condition. Deputy sued on the basis of negligence and violation of his 8th and 14th Amendment rights.

2. On March 3, 2007, the Superior Court dismissed the case, finding that the complaint was legally frivolous and that Deputy failed to file an affidavit pursuant to 18 *Del. C.* § 6853. Deputy appealed. On October 22, 2007, the Supreme Court vacated the order and remanded the case to the Superior Court to address Deputy's 8th and 14th Amendment claims.

3. On December 5, 2007 Deputy filed a Motion for the Appointment of Counsel. Deputy claims he needs assistance with discovery, depositions and interrogatories. Deputy further argues the Court should consider the factual complexity of the case and the ability of Deputy to investigate the facts.

4. The Superior Court has the “inherent authority to appoint counsel for an indigent prisoner in a civil suit.”¹ The Court will only appoint counsel if it is demonstrated that the prisoner does not have meaningful access to the courts by other alternatives.² Meaningful access has been interpreted to mean “either access to an adequate law library or legal assistance in the preparation of complaints, appeals, petitions, etc., though the State is vested with discretion to select the method by which to implement this constitutional guarantee.”³ The State rarely appoints counsel to prisoners for civil claims.⁴

5. Deputy has access to a prison law library. He successfully appealed the dismissal of his claim to the Delaware Supreme Court. There is nothing in the record to show Deputy is being denied “meaningful access” to the Courts.

¹ *Vick v. Department of Corrections*, 1986 WL 8003, at *2 (Del. Super.).

² *Id.*

³ *Id.* at 1.

⁴ *See Jenkins v. Dover Police Commissioner*, 2002 WL 663912 (Del. Super.).

THEREFORE, Deputy's Motion for Appointment of Counsel is
hereby **DENIED**.

IT IS SO ORDERED.

The Honorable Mary M. Johnston