

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

Civil Action No. 14-cv-~~14-cv-00245~~ 00245-MSK-MJW

DEC 19 2016

Reverend Matt Hale,
Plaintiff,

JEFFREY P. COLWELL
CLERK

v.

Federal Bureau of Prisons,
Defendant.

RENEWED MOTION to REMOVE PLAINTIFF from RETALIATORY
SOLITARY CONFINEMENT, DUE to CHANGED CIRCUMSTANCES

Now comes Plaintiff Reverend Matt Hale, pro se, stating as follows:

Reverend Hale received from the Court, on December 5, 2016, Magistrate Judge Watanabe's order of November 28, 2016 (Doc. 104) denying his initial Emergency Motion to Remove Plaintiff from Retaliatory Solitary Confinement (Doc. 95). However, that denial was based, at least in part, on circumstances that the Defendant in this case now admits are no longer in existence--if they ever in fact were--and Hale is compelled to inform the Court as such. In sum, Hale is no longer being held in the SHU for investigation, reclassification, or any other legitimate purpose by the Defendant's own admission, and as long as he remains in the SHU he is unable physically to proceed with the depositions which this Court has allotted to him due to the fact that prisoners in the SHU are greatly restrained in their physical movements when they are outside of their cells. These two facts, taken in tandem with one another, provide the Court with ample authority to order the Defendant to release Hale from the SHU, for under Fed. R. Civ. Pro. 26(c) this Court has the authority to issue whatever protective orders are necessary to enable the discovery process

to function. It should exercise that authority now since the circumstances of Hale's SHU confinement have changed as indicated below:

- I. Since Warden Julian has now admitted to Reverend Hale that Reverend Hale is in fact INNOCENT of the prison infraction of having asked another prisoner to mail the press release to his mother, there is no longer a justification for his SHU confinement to which this Court should pay deference.

Since Hale filed his motion for release from the SHU in September (Doc. 95) and his reply in support thereof in October (Doc. 102), the Defendant has, in the meantime, admitted and acknowledged to Hale that he is indeed innocent of the prison infraction in question, namely, that Hale ever asked another prisoner to mail the press release to his mother. This admission and acknowledgement took place on November 21, 2016 in a conversation between Warden Julian and Reverend Hale. The prison now knows that Hale did not try to circumvent the mail monitoring procedures and his "reclassification" has ended accordingly. Hale is not being reclassified and he remains a medium security prisoner. Indeed, the day after that conversation took place, outgoing SIS (Special Investigative Services) Lieutenant Moseley on November 22, 2016 informed Hale that the only reason now why he is still in the SHU is that the prisoner who had lied about him is still on the compound in general population. In other words, the Defendant would rather keep a man that it acknowledges to be innocent in The Hole than remove the liar (who is apparently responsible for this entire travesty) from the compound. In any event, the fact that the Defendant has now acknowledged that Hale did not try to circumvent the mail monitoring procedures, and has called off its reclassification of Hale altogether, utterly eliminates the justification

that it has previously given this Court for its action in keeping Hale in the SHU. In addition, Warden Julian is now aware that Hale wrote several press releases critical of federal judges while he was at Supermax, that these press releases were allowed by Supermax staff to go out, and that there was nothing "dangerous" about the press release at issue here accordingly. Thus the circumstances of this entire situation are now different from what they were when Magistrate Judge Watanabe denied Reverend Hale's initial motion. Not only did Hale do nothing wrong, but it is Hale who has been acknowledged by the Defendant to have been wronged by the Defendant's actions here. The basis for keeping Hale in the SHU--his reclassification--has been vitiated and Hale should by all rights be returned to the unit at FCI-Terre Haute from whence he was so wrongly taken.

Though this is a significant development, this is not the only reason why the Court should grant Hale's renewed motion to remove him from the SHU. The other reason is that the conditions prevailing in the SHU prevent him from conducting the depositions which the Court has allotted to him as part of the discovery process.

II. When coupled with the fact that Hale is innocent of any wrongdoing that would justify his continuing to be held in the SHU, the fact that the rules of the SHU would require Hale to conduct hours' long depositions hunched over with his wrists chained to his waist is overly burdensome.

Reverend Hale had scheduled depositions for November 10th and November 17th when he informed by staff that, due to the rules of the SHU, he would be required to conduct those depositions with his wrists handcuffed and chained to his waist. Thereupon Hale canceled said depositions pending a more just and decent situation.

Reverend Hale does not know if the Court has ever found itself handcuffed and chained to its waist but the simple fact of the matter is that it is impossible to effectively conduct a deposition under such circumstances. The person is hunched over, in an humiliating posture, and is unable to effectively think about his case, let alone write, review documents, and the like during the deposition. Forcing a prisoner to conduct his depositions in that manner--especially when he had done nothing to justify himself being placed into such a draconian situation in the first place--is oppressive and unduly burdensome within the meaning of Fed. R. Civ. Pro. 26(c) and this Court therefore has the authority and power to release Hale from that situation so that he does not have to endure it. Thus it is not so that Hale's prosecution of this lawsuit is unaffected by Hale's SHU confinement as Magistrate Judge Watanabe surmised, and the Court should release Hale from the SHU at this juncture so that Hale can physically conduct his depositions. If Hale thought that he could successfully conduct his depositions with his hands cuffed and tied to his waist with a chain, he would be happy to do so. However, he knows from prior experience how immobilized a prisoner is in those conditions. At a minimum, the Defendant should be required to answer as to why Hale remains in the SHU despite its admission that he is innocent of any wrongdoing, and why he should be forced to conduct depositions restrained like an animal instead of a more just and equitable solution being found. While Judge Watanabe stated in his order that Reverend Hale "can still conduct discovery" in the SHU (Doc# 104 at 6), it is simply untrue that he is able to conduct

depositions while he is still there.

CONCLUSION

For the reasons stated above, the Court should grant this Renewed Motion to Remove Plaintiff from Retaliatory Solitary Confinement, Due To Changed Circumstances, and order the Defendant to release Hale from the SHU forthwith.

Respectfully submitted,

Rev. Matt Hale
Reverend Matt Hale, pro se

December 7, 2016

Declaration of Reverend Matt Hale

I swear under penalty of perjury that the foregoing is entirely true and correct to the best of my knowledge and belief pursuant to 28 U.S.C. sec. 1746.

Rev. Matt Hale
Reverend Matt Hale

Reverend Matt Hale
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FCI
P.O. Box 33
Terre Haute, IN 47808

CERTIFICATE OF SERVICE

I hereby certify that on December 8th, 2016 I served the foregoing document upon the Defendant by mailing a true and correct copy of it to Susan Prose, Asst. U.S. Attorney, 1225 17th Street, Suite 700, Denver, Colorado 80202 via first class mail, postage

fully prepaid, who is Defendant's counsel in this case.

Rev. Matt Hale

Reverend Matt Hale

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