

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

PLRA C.R. 3(b) FINAL ORDER

August 13, 2020

No. 20-1527	KEVIN L. MARTIN, Plaintiff - Appellant v. CHRISTOPHER NICHOLSON, Defendant - Appellee
Originating Case Information:	
District Court No: 2:18-cv-00391-MJD-JMS Southern District of Indiana, Terre Haute Division Magistrate Judge Mark J. Dinsmore	

The pro se appellant was DENIED leave to proceed on appeal in forma pauperis by the appellate court on May 18, 2020 and was given fourteen (14) days to pay the \$505.00 filing fee. The pro se appellant has not paid the \$505.00 appellate fee. Accordingly,

IT IS ORDERED that this appeal is **DISMISSED** for failure to pay the required docketing fee pursuant to Circuit Rule 3(b).

IT IS FURTHER ORDERED that the appellant pay the appellate fee of \$505.00 to the clerk of the district court. The clerk of the district court shall collect the appellate fees from the prisoner's trust fund account using the mechanism of *Section 1915(b)*. *Newlin v. Helman*, 123 F.3d 429, 433 (7th Cir. 1997).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

KEVIN MARTIN,)
)
 Plaintiff,)
)
 v.) No. 2:18-cv-00391-MJD-JMS
)
 CHRISTOPHER NICHOLSON,)
)
 Defendant.)

JUDGMENT

The jury having rendered a verdict in favor of Defendant in this case, the Court
HEREBY ENTERS JUDGMENT in favor of Defendant Christopher Nicholson and against
Plaintiff Kevin Martin.

SO ORDERED.

Dated: 10 MAR 2020



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

Distribution:

KEVIN MARTIN
169789
WABASH VALLEY - CF
WABASH VALLEY CORRECTIONAL FACILITY - Inmate Mail/Parcels
6908 S. Old US Hwy 41
P.O. Box 1111
CARLISLE, IN 47838

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

DEFENDANTS' EXHIBIT LIST

Defendants, Christopher Nicholson and Jerricha Meeks, by counsel, pursuant to this Court's Entry Setting and Directing Preparations for Evidentiary Hearing [ECF 18], respectfully file their list of exhibits that may be used as evidence in this matter.

- A. Offender Information System Conduct summary for Plaintiff Kevin Martin, DOC #169789.
 - B. Bed location history for Plaintiff Kevin Martin, DOC #169789.
 - C. Indiana Department of Correction file for B-213 Threatening write-up issued against Plaintiff Kevin Martin, DOC #169789 dated 7-23-2018. This includes:
 - 1. Report of Conduct dated 7-23-2018.
 - 2. Notice of Disciplinary Hearing (Screening Report) notification date 7-26-2018.
 - 3. Report of Disciplinary Hearing dated 7-30-2018.
 - 4. Witness statements
 - i. Major Busby dated 7-27-2018.
 - ii. Officer Gilstrap dated 7-27-2018.

23

- iii. Caseworker Meeks dated 7/23/2018.
- iv. Notice of Lay Advocate/Witness: Offender Montgomery, Doc #996375.
- v. Notice of Lay Advocate/Witness: Offender Mayfield, Doc #178522.

- 5. Video of 7-23-2018 incident.¹
- 6. Report of Disciplinary Hearing Video Evidence Review dated 7-30-2018.
- 7. Disciplinary Hearing Appeal dated 7-31-2018.
- 8. Letter written by Plaintiff Kevin Martin, DOC #169789, under W-V-5-1807-0002.

D. Indiana Department of Correction file for A-102 battery write-up for Kevin Martin, DOC #169789 dated 7-27-2018. This includes:

- 1. Report of Conduct dated 7-27-2018.
- 2. Notice of Disciplinary Hearing (Screening Report) dated 8-2-2018.
- 3. Postponement of Disciplinary Hearing dated 8-6-2018.
- 4. Report of Disciplinary Hearing dated 8-14-2018.
- 5. Witness statements:
 - i. Major Busby
 - ii. Officer Lovelace
 - iii. Officer Foster
- 6. Video of 7-27-2018 incident.²
- 7. Disciplinary Hearing Appeal.
- 8. Photographic evidence from 7-27-2018 incident, (i-v)

¹ This video evidence has been sent via mail to both the court and Plaintiff's counsel, Robert E. Duff.

² This video evidence has been sent via mail to both the court and Plaintiff's counsel, Robert E. Duff.

E. Indiana Department of Correction file for A-102 battery write-up for Kevin Martin,

DOC #169789 dated 10-05-2018. This includes:

1. Report of Conduct dated 10-05-2018.
2. Notice of Disciplinary Hearing (Screening Report) dated 10-11-2018.
3. Request for interview dated 10-12-2018 written by Lt. Nicholson.
4. Witness Statements
 - i. Caseworker Meeks dated 10-09-2018.
 - ii. Caseworker Meeks dated 10-12-2018.
 - iii. Major Russell dated 10-12-2018.
 - iv. Lt. Nicholson dated 10-12-2018.
5. Video of 10-05-2018 incident.³
6. Photographic evidence from 10-05-2018 incident. (i-vi)
7. Report of Conduct dated 10-05-2018 written by Caseworker Meeks.

F. Report of Inter-Institutional Transfer requested 9-14-2018.

G. Offender Information Sanction Detail.

H. Any documents necessary for rebuttal or impeachment.

Respectfully submitted,

CURTIS T. HILL, Jr.
Indiana Attorney General
Atty. No. 13999-20

By: s/ Marley G. Hancock
Marley G. Hancock
Deputy Attorney General
Attorney No. 34617-32

³ This video evidence has been sent via mail to both the court and Plaintiff's counsel, Robert E. Duff.

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2018, the foregoing was filed using the Court's CM/ECF electronic filing system. Filings can be accessed via the electronic system. Copies of the filed documents will be electronically sent to all counsel of record in the CM/ECF system.

Robert E. Duff
Indiana Consumer Law Group
The Law Officer of Robert E. Duff
P.O. Box 7251
Fishers, IN 46037
robert@robertdufflaw.com⁴

s/Marley G. Hancock
Marley G. Hancock
Deputy Attorney General

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⁴ The video disc was mailed to the address listed for Attorney Duff. All other exhibits were sent via email to the address listed on the docket.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

KEVIN MARTIN,)
Plaintiff,)
v.) No. 2:18-cv-00391-MJD-JMS
C. NICHOLSON,)
Defendant.)

VERDICT FORM

1. Did Mr. Martin prove by a preponderance of the evidence that (1) Lieutenant Nicholson ordered the shakedown of Mr. Martin's cell on August 28, 2018; (2) the lawsuit filed by Mr. Martin was a reason that Lieutenant Nicholson ordered the shakedown; and (3) the shakedown would be likely to deter an average person in Mr. Martin's circumstances from filing lawsuits against prison employees?

Check one:

Yes No

If your answer to Question 1 was "Yes," proceed to Question 2. If your answer to Question 1 was "No," you have found in favor of Lieutenant Nicholson. Do not answer any further questions; instead, proceed to sign and date the Verdict Form.

2. Did Lieutenant Nicholson prove by a preponderance of the evidence that there were reasons other than the filing of the lawsuit that would have led Lieutenant Nicholson to order the shakedown even if Mr. Martin had not filed the lawsuit?

Check one:

Yes No

If your answer to Question 2 was "Yes," do not answer any further questions; instead, proceed to sign and date the Verdict Form. If your answer to Question 2 was "No," proceed to Question 3.

3. What dollar amount of compensatory damages did Mr. Martin prove by a preponderance of the evidence was caused by Lieutenant Nicholson? (Note: If you find that Mr. Martin did not prove any compensatory damages, you must enter \$1.00.)

\$ _____

Continue to Question 4.

4. Do you find by a preponderance of the evidence that punitive damages should be assessed against Lieutenant Nicholson?

Check one:

Yes No

If your answer to Question 4 was "Yes," proceed to Question 5. If your answer to Question 4 was "No," do not answer Question 5; instead, proceed to sign and date the Verdict Form.

5. What dollar amount of punitive damages do you award in favor of Mr. Martin and against Lieutenant Nicholson?

\$ _____

Christina Ham

3-10-2020

Presiding Juror

Date

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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ORDER

May 18, 2020

Before

MICHAEL S. KANNE, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*

No. 20-1527	KEVIN L. MARTIN, Plaintiff - Appellant v. CHRISTOPHER NICHOLSON, Defendant - Appellee
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Originating Case Information:

District Court No: 2:18-cv-00391-MJD-JMS
Southern District of Indiana, Terre Haute Division
Magistrate Judge Mark J. Dinsmore

The following is before the court:

1. **DECLARATION IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS**, filed on April 16, 2020, by the pro se appellant.
2. **MOTION SEEKING PERMITTED TO APPEAL IN THE FORMA PAUPERIS**, filed on April 16, 2020, by the pro se appellant.
3. **NOTICE TO THE COURT**, filed on April 21, 2020, by the pro se appellant.

Upon consideration of appellant's motions, the district court's order pursuant to 28 U.S.C. § 1915(a)(3) certifying that the appeal was filed in bad faith, and the record on appeal,

IT IS ORDERED that the motion for leave to proceed in forma pauperis on appeal is **DENIED**. *See Lee v. Clinton*, 209 F.3d 1025 (7th Cir. 2000). Appellant Kevin Martin has not identified a good faith issue that the district court erred in its resolution of his motion in limine or that he was prejudiced at trial. Martin shall pay the required docketing fee within 14 days, or this appeal will be dismissed for failure to prosecute pursuant to Circuit Rule 3(b). *See Newlin v. Helman*, 123 F.3d 429, 434 (7th Cir. 1997).

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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ORDER

April 3, 2020

By the Court:

	KEVIN L. MARTIN, Plaintiff - Appellant
No. 20-1527	v.
	CHRISTOPHER NICHOLSON, Defendant - Appellee

Originating Case Information:
District Court No: 2:18-cv-00391-MJD-JMS Southern District of Indiana, Terre Haute Division Magistrate Judge Mark J. Dinsmore

The following is before the court: **MOTION FOR EXTENSION OF TIME**, filed by the pro se appellant on April 2, 2020.

This appeal is subject to the Prison Litigation Reform Act and therefore all proceedings are suspended pending the assessment and payment of any necessary fees. See *Newlin v. Helman*, 123 F.3d 429, 434 (7th Cir. 1997). A review of the docket indicates that the appellant's fee status has not yet been determined. Accordingly,

IT IS ORDERED that the motion is **GRANTED** to the extent that the appellant shall file the Circuit Rule 3(c) docketing statement and transcript information sheet, if one is necessary, with this court by June 1, 2020.

Further, the appellant shall either pay the \$505.00 filing fee or file a motion for leave to proceed on appeal in forma pauperis in the district court by June 1, 2020.

**Additional material
from this filing is
available in the
Clerk's Office.**