

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

KENNETH COUNCE,

Plaintiff,

v.

Case No. 13-3199-JTM-KGS

RYAN M. WOLTING, et al.,

Defendants.

MEMORANDUM AND ORDER

The court granted summary judgment against plaintiff Kenneth Counce's 42 U.S.C. § 1983 claims of excessive force and deliberate indifference to medical needs on March 2, 2018. (Dkt. 251). The court determined granted the defendants' summary judgment motions, and found, based in part upon its review of dash cameral video, that no reasonable jury could find that defendant Wolting used excessive force during Counce's arrest. The Tenth Circuit affirmed the decision on January 9, 2019. (Dkt. 227).

Since that time, Counce has submitted a series of letters to the Clerk of the Court. On December 20, 2019, the court found that to such extent a letter might be deemed a Motion for Relief under Federal Rule of Civil Procedure 5(c) or 60(b), the request was untimely. The court found that defendant's letter was "not been filed within a reasonable time, particularly in light of the fact that Counce pursued a direct appeal of this court's decision to the Tenth Circuit Court of Appeals, which affirmed this court's grant of summary judgment." (Dkt. 230, at 2).

Since then Counce has submitted three further letters to the court. These reference television news reports produced following the death of George Floyd in Minnesota. None of these communications present newly-discovered, admissible evidence relevant to Counce's particular claims against these particular defendants. Nor do the communications show how evidence of a similar nature, with reasonable diligence, could not have been presented in 2018. To the contrary, Counce simply again offers his interpretation of the dash camera videos, an interpretation previously rejected by this court and the Tenth Circuit.

The court adopts and incorporates its Order of December 20, 2019 and, to the extent such communications might be deemed a request for relief, denies such request. (Dkt. 235-37). Future communications of a similar nature will be summarily denied by reference to this Order.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE