

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Sean Swain,

Plaintiff,

v.

Gary C. Mohr, et al.,

Defendants.

) Case No. 4:14-cv-2074  
)  
)

) Hon. Benita Y. Pearson  
)

) DECLARATION OF RICHARD M.  
) KERGER  
)

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I, Richard M. Kerger, declare under penalty of perjury the following:

1. I am counsel for Sean Swain in this litigation.
2. On the weekend of January 31<sup>st</sup>- February 1<sup>st</sup>, I was notified by Ben Turk, a friend of Sean's, that certain video visits to be had between Sean and himself had been cancelled due to some unknown problem.

3. I had received a phone call late in the afternoon of January 30<sup>th</sup> from Thomas Miller, the member of the Attorney General's Office representing the defendants in this litigation. By the time I was able to get his message, it was after 5:30 and I did not attempt to call him back.

4. Subsequently I called him on Monday. He explained to me that there was an investigation involving the Federal Bureau of Investigation into Sean because of statements he had made. One dealt with the fact that he had given information to people who then circulated it about the car driven by Warden Terry Tibbals of the Marion prison and the fact that he had a customized license plate "Black Lightning". It was considered this was a threat to Mr. Tibbals. Mr. Miller also said that Sean had threatened to burn down the Statehouse and they accordingly were conducting an investigation and restricting his ability to use the video aspect of Skype. He explained that these communications had been picked up by someone at JPay and forwarded to the prison.

5. I subsequently spoke with Mr. Swain. I learned that the license plate issue had surfaced several years before. He had acquired the information from Warden Tibbals himself during an art reception at Marion Prison which was attended by not only Warden Tibbals but also his mother and father. As to the burning down of the Statehouse, that was a statement made in connection with Mr. Swain's mock inauguration speech since he

had been a candidate for Governor in 2014. He pretended as if he won and it was posted by others on a website.

6. I sent Mr. Miller an email passing this information on and asked for an explanation. I then sent another email asking for the information. Neither of those emails have been responded to.

I declare the above to be true and correct under penalties of perjury.



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RICHARD M. KERGER