

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SAMUEL LANGSTON,

Petitioner,

v.

STATE OF WISCONSIN - DANE CO.
CIRCUIT COURT and PATRICK J. FIEDLER,

Respondents.

ORDER

00-C-753-C

This is a proposed civil action for monetary and injunctive relief, brought pursuant to 42 U.S.C. § 1983. Petitioner Samuel Langston seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the fees and costs of instituting this lawsuit.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, the court must dismiss the case if the complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant who is immune from such relief. See

28 U.S.C. § 1915(e)(2). Petitioner contends that respondent Dane Country Circuit Court Judge Patrick Fiedler acted inappropriately at petitioner's trial. His complaint will be dismissed as legally frivolous.

In his complaint, petitioner makes the following allegations of fact.

ALLEGATIONS OF FACT

Respondent Patrick Fiedler is a judge of the Dane County Circuit Court.

On December 18, 2000, a jury was selected to hear the charge of disorderly conduct against petitioner. Petitioner was not included in the jury selection process and his attorney, Jon O. Helland, had not talked with him about the case. Petitioner felt betrayed and was convinced that his attorney would not protect his best interests.

On December 20, 2000, petitioner told respondent Judge Fiedler that he did not want to be represented by attorney Helland. Respondent Judge Fiedler told petitioner that he was street smart and only wanted to set the trial over to another time and that petitioner had gone to court many times and knew exactly what he was doing. Respondent also threatened to lock petitioner in jail, telling him that if he continued to talk (rather than letting his attorney speak for him), respondent would lock him up. Respondent told petitioner he had five minutes to decide whether he wanted to represent himself or have public defender Helland represent him.

Petitioner chose to represent himself. Respondent told petitioner to “shut up” or he would go to jail. Petitioner told respondent that he thought he should select his jurors because he was representing himself. Respondent told petitioner to shut up and that the trial would go forward that day.

Petitioner told the judge about a juror who was sleeping. In front of the jurors, respondent told petitioner, “This is another one of your ways to set the trial off, we will continue.” The juror responded, saying, “I think better with my eyes closed; if you want me to keep them open, I will.” Petitioner told the judge that he had not filed a motion to dismiss because of insufficient evidence and that there was not a “motion of discovery filed yet, so he would know something about his case.” Respondent told petitioner that all of his motions were denied, even though they had not yet been filed. When it became clear that the witnesses were talking about whether petitioner slapped “some girl” instead of the actual charge against him and petitioner objected to respondent, respondent told petitioner that the jurors did not have to determine which incident was disorderly.

DISCUSSION

Petitioner’s claims should be raised in an appeal of his conviction for disorderly conduct and not in a federal court action brought under § 1983. Petitioner’s claims against both

respondents will be dismissed as legally frivolous.

Petitioner's claim against respondent Judge Fiedler is barred by the doctrine of absolute immunity because respondent was acting within the scope of his judicial function. See Newman v. Indiana, 129 F.3d 937, 941 (7th Cir. 1997) (judges enjoy absolute immunity for acts within their lawful jurisdiction). Petitioner's claim against the Dane County Circuit Court is also frivolous: petitioner's complaint is completely devoid of any allegations regarding that entity, other than to request that this court order the Circuit Court for Dane County to pay petitioner five million dollars. See Puchner v. Waukesha County Circuit Court, 992 F. Supp. 1061, 1062 (E.D. Wis. 1998). Petitioner does not allege that respondent Judge Fiedler's actions resulted from any policy or custom of the circuit court or otherwise show how the court could be liable to him.

ORDER

Petitioner Samuel Langston's request for leave to proceed in forma pauperis is DENIED and this action is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2) because his

claim is legally frivolous.

Entered this 3rd day of January, 2001.

BY THE COURT:

BARBARA B. CRABB
District Judge