

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

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DAREN MARON,

Petitioner,

v.

JEFFERSON CO. STENOGRAPHER  
MILAN LOARSCH AND KENNETH  
M. SCHOPEN,

Respondents.

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ORDER

01-C-655-C

Petitioner Daren Maron seeks monetary damages in this proposed civil action brought pursuant to 42 U.S.C. § 1983. In his proposed complaint, petitioner raises the same claim he raised in another lawsuit in this court, Maron v. Schopen, 01-C-161-C. In that case, petitioner alleged that he was unable to exercise his constitutional right of access to the courts to appeal his state court criminal convictions and sentence because respondent Schopen failed to give him copies of his trial and sentencing transcripts. That case was dismissed on May 24, 2001, after I found that petitioner could not bring his claim for money damages against respondent Schopen unless he first obtained a favorable ruling from the state courts overturning his conviction.

On November 14, 2001, petitioner, who was then a prisoner at the Oregon Correctional Institution in Oregon, Wisconsin, wrote to this court again, raising the same claim that was rejected in Maron v. Schopen. Apparently because he believed that the holding in that case merely required him to return to state court to exhaust the remedies available to him in that forum, petitioner noted that “[a]t this time this has been done” and elaborated briefly on his unsuccessful efforts to obtain relief in state court. Petitioner also argued that his November 14, 2001 filing should be treated as an amended complaint in case no. 01-C-161-C, rendering it unnecessary for him to pay another \$150 filing fee. In an order dated December 6, 2001, I noted that petitioner had misunderstood this court’s earlier ruling. I emphasized that before he could raise his claim in a § 1983 action in this court, he was required to obtain a *favorable* state court ruling that reversed or modified his sentence and that merely returning to state court and *losing* was not good enough. I also noted that if petitioner intended to persist in pursuing his claim in this court, he would have to file another action and pay the requisite \$150 filing fee.

Undeterred, petitioner wrote to the court again on December 28, 2001, noting that he was about to be released from prison, that he could not pay a new filing fee because prison officials would not let him spend any more money from his prison release account and asking that his case be put on hold until he was released and could afford to pay the filing fee. Petitioner also asked that counsel be appointed to represent him. In an order dated

January 3, 2002, I granted petitioner's request for additional time to pay his filing fee and denied his motion for appointment of counsel. On February 15, 2002, petitioner advised the court that he had been released from prison but could not afford to pay the court's filing fee. Instead, petitioner sent the court \$10 "to show that I will continue to make payments" and asked again to be appointed counsel. That same day, Clerk of Court Skupniewitz wrote petitioner to advise him that as a non-prisoner, the Prison Litigation Reform Act no longer applied to him and accordingly he could not pay the court's filing fee in installments. The clerk informed petitioner that he must either pay the entire \$150 filing fee or seek indigent status.

On February 19, 2002, petitioner sought 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 petitioner's affidavit of indigency I conclude that he is unable to prepay the full fees and costs of instituting this lawsuit. In addressing any pro se litigant's complaint, the court must construe the complaint liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972), and grant leave to proceed if there is an arguable basis for a claim in fact or law. Neitzke v. Williams, 490 U.S. 319 (1989).

#### OPINION

In Maron v. Schopen, No. 01-C-161-C, slip op. 3-7 (order entered May 24, 2001),

petitioner alleged that his inability to obtain his trial and sentencing transcripts prevented him from exercising his constitutional right to appeal his convictions and sentence. As noted above, in that case I held that petitioner could not “proceed on [his] civil rights claim under § 1983 until he has succeeded in having his conviction reversed or sentence modified.” *Id.* at 4 (emphasis added). Presently before the court is petitioner’s proposed complaint that appears to be a photocopy of the same complaint he submitted in case no. 01-C-161-C. The only new facts petitioner has alleged are in a letter accompanying the photocopied complaint and involve his unsuccessful efforts to get the state courts to modify his sentence.

To be clear, it is not good enough that petitioner returned to state court and *lost*. Rather, this court could grant petitioner the relief he seeks, money, only upon a showing that he had returned to state court and *won* a reversal or modification of his sentence, thus showing that the lack of a transcript caused him an injury of constitutional proportion. For the reasons stated in case no. 01-C-161-C, a copy of which is attached to this order, unless petitioner can show that his sentence was reversed or modified by a state court, he cannot obtain money damages in this court on his constitutional claim that he was denied his right to appeal his convictions and sentence because respondents failed to give him copies of his trial and sentencing transcripts. Because petitioner has not alleged that his sentence was reversed or modified by a state court, he will be denied leave to proceed in forma pauperis and his motion for appointment of counsel will be denied as moot.

ORDER

1. Petitioner Daren Maron's request for leave to proceed in forma pauperis is DENIED and his claim that he was denied his constitutional right of access to the courts is DISMISSED for failure to state a claim upon which relief can be granted;

2. Petitioner's motion for appointment of counsel is DENIED as moot.

Entered this 20th day of March, 2002.

BY THE COURT:

BARBARA B. CRABB  
District Judge