

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

MARCELO SANDOVAL,

Petitioner,

v.

PATSY KLIMCZAK
and RAMON ORTEGA,

Respondents.

ORDER

02-C-0281-C

This is a proposed civil action for monetary relief. Petitioner Marcelo Sandoval, who is an inmate at the Federal Correctional Institution in Oxford, Wisconsin, alleges that while he was housed at the federal prison in Leavenworth, Kansas, respondent Ramon Ortega (a fellow inmate and law librarian) agreed that he and respondent Patsy Klimczak (Ortega's mother) would research and file a § 2255 petition on behalf of petitioner in exchange for \$4,000. Petitioner alleges that he sent four \$1,000 money orders to respondent Klimczak, who cashed them, and that respondent Ortega never filed the promised § 2255 petition and has ignored all of petitioner's letters of inquiry.

Originally, petitioner requested leave to proceed in forma pauperis and was assessed

an initial partial payment of \$45.84. Instead of paying the initial partial payment only, petitioner paid the full filing fee of \$150. Although petitioner paid the full filing fee (and thus is not proceeding in forma pauperis), his complaint must still be screened because he is a prisoner proceeding pro se. See 28 U.S.C. § 1915A.

Generally, federal courts have the power to hear two types of cases: (1) cases in which a plaintiff alleges a violation of his or her constitutional rights or rights established under federal law and (2) cases in which a citizen of one state alleges a violation of his or her rights established under state law by a citizen of another state *and* the amount in controversy exceeds \$75,000. See 28 U.S.C. § 1331-32. Petitioner's claim does not fall into either category because it is a state law claim (for example, breach of contract) in which the amount in controversy is \$4,000, which is well below the amount required for diversity jurisdiction.

Because this court does not have subject matter jurisdiction over petitioner's claim, I must deny his request for leave to proceed. As an alternative to federal court, petitioner might consider reporting the incident for criminal prosecution to the United States Attorney for the district in which the alleged events took place.

ORDER

IT IS ORDERED that petitioner Marcelo Sandoval's complaint is DISMISSED for lack of subject matter jurisdiction. Petitioner will not receive a strike because dismissal for

lack of subject matter jurisdiction is not a reason enumerated in 28 U.S.C. § 1915(g) that requires issuing a strike.

Entered this 18th day of June, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge