

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

WILLIAM VON FLOWERS,

Petitioner,

v.

JOE LEEAN, JANE DOE and JOHN DOE,
each in their individual capacity, and in
their official capacity as employees of the
Department of Health and Family Service,

Respondents.

OPINION AND ORDER

00-C-695-C

This is a proposed civil action for declaratory, injunctive and monetary, brought pursuant to 42 U.S.C. § 1983. Petitioner William Von Flowers, who is presently confined at the Wisconsin Resource Center in Winnebago, Wisconsin 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. Subject matter jurisdiction is present. See 28 U.S.C. §§ 1331, 1343.

In addressing any pro se litigant's complaint, the court must construe the complaint

liberally. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972). However, pursuant to 28 U.S.C. § 1915(e)(2), if a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. Petitioner's request for leave to proceed in forma pauperis will be denied because he has failed to state a claim that respondents violated his Fourteenth Amendment rights.

In evaluating petitioner's proposed action, I have reviewed the petitioner's twenty-one page complaint as well as documents titled "Addendum" and "Attachment." The allegations in the complaint and accompanying documents are as follows.

ALLEGATIONS OF FACT

A. Parties

Petitioner William Von Flowers is confined at the Wisconsin Resource Center in Winnebago, Wisconsin pursuant to Wisconsin's Sexual Predator Law, Wis. Stats. ch. 980. Respondent Joe Leean is the Secretary of the Wisconsin Department of Health and Family Services. Respondents Jane and John Doe are individuals employed by either the Department of Health and Family Services or the Wisconsin Department of Corrections.

B. Commitment Proceedings

On December 17, 1996, Milwaukee County filed a Chapter 980 petition against petitioner in which it alleged that petitioner was a sexually violent person. On December 20, 1996, the Milwaukee County court ordered petitioner to be transferred to an appropriate facility for evaluation so that it could be determined whether he was a sexually violent person. On January 24, 1997, Dennis M. Doren submitted an evaluation to the court in which he diagnosed petitioner with alcohol dependency and antisocial personality disorder. Doren concluded that petitioner's antisocial personality disorder predisposed him to commit sexually violent acts as defined by Chapter 980. On October 27, 1997, before petitioner's trial began, petitioner complained that the Department of Health and Family Service had used false information regarding his childhood to diagnose him. The court ruled that the information was irrelevant and committed petitioner to the custody of the Department of Health and Family Service.

C. Diagnostic Formula

When a person is civilly committed, he is entitled to a diagnosis and treatment. Respondents have made diagnoses from the Diagnostic and Statistical Manual of Mental Disorders without using any of the manual's objective criteria, and sometimes have made

diagnoses that do not exist in the manual. Respondents have confined people indefinitely on the basis of diagnoses that cannot be supported by a medical manual. Experts have relied on criminal conduct when making diagnoses of mental disorders.

Petitioner discusses the diagnoses of paraphilia, “paraphilia not otherwise specified” and antisocial personality disorder.

OPINION

I. SCREENING

It is not clear what rights petitioner believes respondents violated. In his complaint, he states that, “Although [petitioner] believes that chapter 980 is unconstitutional, and that the findings at his involuntary commitment hearings are clearly erroneous, he does not challenge those issues in this litigation. This litigation addresses only the deliberate use of a fraudulent diagnostic formula.” Petitioner is not challenging his diagnosis in his initial commitment hearings or the treatment he is receiving as a result of his diagnosis. Rather, it seems that petitioner is complaining about the use of a diagnostic system during his confinement that is allegedly unreliable and unscientific. Petitioner’s allegation that he has been diagnosed with a mental disease on the basis of a defective diagnostic formula since his commitment hearing does not state a viable claim under the United States Constitution. Although petitioner may

disagree with the diagnosis he has been given while confined pursuant to Wis. Ch. 980, the Fourteenth Amendment does not entitle him to any particular procedure in receiving such a diagnosis. To the extent that petitioner is challenging the validity of his confinement as a result of his diagnosis, this claim cannot be brought under § 1983. Heck v. Humphrey, 512 U.S. 477, 481 (1994) (citing Preiser v. Rodriguez, 411 U.S. 475 (1973)) (stating that a petition for habeas corpus under 28 U.S.C. § 2254 “is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release”) Petitioner’s request for leave to proceed in forma pauperis will be denied for his failure to state a claim upon which relief may be granted.

II. MOTION FOR APPOINTMENT OF COUNSEL

Because petitioner’s request for leave to proceed in forma pauperis will be denied, I need not address his motion for appointment of counsel.

ORDER

IT IS ORDERED that

1. Petitioner William Von Flowers’s request for leave to proceed in forma pauperis

on his Fourteenth Amendment claim is DENIED;

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

Entered this 2nd day of December, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge