

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

KEVIN D. LOFFTIN,

Plaintiff,

v.

MADISON POLICE DEPT.;
DANE COUNTY NARCOTICS/GANG
TASK FORCE; U.S. DRUG ENFORCEMENT
AGENCY; and JOHN DOES,

Defendants.

ORDER

03-C-437-C

This is a civil action for monetary and injunctive relief, brought pursuant to 42 U.S.C. § 1983. Kevin Lofftin, who is currently confined at the Thompson Correctional Center in Deerfield, Wisconsin, alleges that defendants have violated his constitutional rights by confiscating and retaining his property without due process of law. Although plaintiff has paid the filing fee in full, because plaintiff is a prisoner, his complaint must be screened pursuant to 28 U.S.C. § 1915A. 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 prisoner's complaint must be dismissed if, even under a liberal construction,

it 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 42 U.S.C. § 1915e. Because there are adequate state remedies available to plaintiff, his claim that he was deprived of his constitutional right to procedural due process will be dismissed for lack of legal merit.

In his complaint, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

In February 2001 while driving, plaintiff Kevin Lofftin was stopped by officers from defendant Madison Police Department for a traffic violation. The officers searched plaintiff, arrested him and charged him with possession of cocaine and THC. Plaintiff does not allege what evidence was discovered or with what crime he was charged. However, Wisconsin's online public database for criminal cases reveals that on February 27, 2001, plaintiff was charged with one count of possession of cocaine with intent to sell under Wis. Stat. § 961.41(1m)(cm)(2) and one count of possession of THC under Wis. Stat. § 961.41(3g)(e). (Because the criminal charges are a matter of public record, I may consider them even though plaintiff does not specify the charges in his complaint. Menominee Indian Tribe of Wisconsin v. Thompson, 161 F.3d 449, 455 (7th Cir. 1998)). In addition, defendants confiscated his truck, a Lincoln Navigator worth \$30,000, and \$2500 in cash. Later, the

police department and defendant Dane County Narcotics/Gang Task Force released the truck to defendant United States Drug Enforcement Agency. They gave the money to someone who did not own it on the basis of lies and false documentation.

Plaintiff challenged the legality of the stop in the circuit court criminal proceedings and the court ruled in his favor, dismissing the case against him.

DISCUSSION

I understand plaintiff to contend that the confiscation and retention of his truck and money is a deprivation of his property without due process of law in violation of the Fourteenth Amendment.

The Uniform Controlled Substances Act authorizes police officers to seize property without notice or hearing if the seizure is performed incident to an arrest. See Wis. Stat. § 961.55(2)(a). Property that may be seized includes both vehicles used for transporting controlled substances, Wis. Stat. § 961.55(d), and “money, directly or indirectly derived from or realized through the commission of any crime under this chapter,” Wis. Stat. § 961.55(f). This statute does not violate due process. Police officers may seize property involved in illegal activity without notice or hearing if the property is of the type that could be easily moved, destroyed or concealed. United States v. Assets and Equipment of West Side Building Corp., 188 F.3d 440 (7th Cir. 1999); see Calero-Toledo v. Pearson Yacht

Leasing Co., 416 U.S. 663 (1974).

Plaintiff's primary source of disgruntlement appears to be that his property was not returned to him immediately after his criminal case was dismissed. Although plaintiff's frustration is understandable, he demands more than due process requires. In a case such as this, the only question is whether meaningful postdeprivation remedies exist under state law. Hudson v. Palmer, 468 U.S. 517 (1984). One avenue of relief is provided by Wis. Stat. § 968.20. Plaintiff may seek return of his property by filing an action under that statute if the state has not initiated forfeiture proceedings against him. See Jones v. State, 226 Wis. 2d 565, 594 N.W.2d 738 (Wis. 1999). However, plaintiff's remedies under § 968.20 are limited to return of the property. If defendants have already disposed of the property, a court may not award money damages. City of Milwaukee v. Glass, 2001 WI 61, 243 Wis. 2d 636, 628 N.W.2d 343. Plaintiff's allegations suggest that return of the property may no longer be a viable option. Although a simplified remedy under § 968.20 may no longer be available, plaintiff could still file an action in state court for conversion. T.W.S., Inc. v. Nelson, 150 Wis. 2d 251, 440 N.W.2d 833 (Ct. App. 1989); Wis. Stat. § 893.51. Because I cannot say that plaintiff's available state law remedies are "meaningless or nonexistent," Easter House v. Felder, 910 F.2d 1387, 1406 (7th Cir. 1990), I must dismiss plaintiff's claim that he was deprived of his due process rights under the Fourteenth

Amendment on the ground that the claim is without legal merit.

ORDER

IT IS ORDERED that

1. This action is DISMISSED pursuant to 28 U.S.C. § 1915A because the claim in the complaint is legally frivolous.

2. The clerk of court is directed to enter judgment for defendants and close this case.

3 A strike will be recorded against plaintiff in accordance with 28 U.S.C. § 1915(g).

Entered this 23rd day of September, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge