

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

TYLON C. CHRISTIAN,

Petitioner,

v.

DOUGLAS TIMMERMAN, KATHERINE
DAYTON, NEIL LANE, DENISE SYMDON,
MARCIA GOODWIN, and CAROLE BRIONES,

Respondents.

ORDER

03-C-688-C

On December 31, 2003, I dismissed this case after concluding that the allegations in petitioner’s complaint failed to state a claim upon which relief may be granted. In particular, I ruled that petitioner could not raise in a § 1983 action a claim that he was illegally incarcerated for a period of time in 2001 and 2002, because he had failed to show that the custody he challenged “ha[d] been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” Heck v. Humphrey, 512 U.S. 477, 487 (1994). Petitioner later filed a motion to alter or amend the judgment under Fed. R. Civ. P. 59, which I denied in an order dated January 26, 2004. On February 2,

2004, petitioner filed a notice of appeal.

On December 28, 2004, the Court of Appeals for the Seventh Circuit issued its opinion, case no. 04-1373, vacating this court's dismissal of petitioner's case. According to the court of appeals, petitioner's complaint does not reveal whether the custody about which petitioner complains was authorized by the parole terms that he conceded violating at a parole revocation hearing in June 2002, or whether the parole revocation relates to an entirely different prosecution and conviction. This is a matter that cannot be resolved without further development of the record on a motion for summary judgment. Therefore, petitioner will be granted leave to proceed on his claim that state officials arrested and detained him without probable cause and due process of law in violation of his Fourth and Fifth Amendment rights.

ORDER

IT IS ORDERED that petitioner Tylon Christian's request for leave to proceed in forma pauperis is GRANTED on his claim against respondents Douglas Timmermann, Katherine Dayton, Neil Lane, Denise Symdon, Marcia Goodwin and Carol Briones that these respondents arrested and detained him for a period of time in 2001 and 2002 without probable cause and due process of law in violation of the Fourth and Fifth Amendments.

- For the remainder of this lawsuit, petitioner must send respondents a copy of every

paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondents, he should serve the lawyer directly rather than respondents. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

- Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- The unpaid balance of petitioner's filing fee is \$140.23; petitioner is obligated to pay this amount in monthly payments as described in 28 U.S.C. § 1915(b)(2).
- Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on the state defendants.

Entered this 31st day of January, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge