

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

THOMAS L. ANDERSON,

Petitioner,

v.

WISCONSIN DEPARTMENT OF
JUSTICE and STEVEN B. WICKLAND,

Respondents.

ORDER

04-C-361-C

This is a proposed civil action for monetary relief, brought under 42 U.S.C. § 1983. Petitioner, a former prisoner at the Stanley Correctional Institution in Stanley, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915.

Because petitioner filed his complaint after he was released from prison, he is not subject to the 1996 Prison Litigation Reform Act. This means that if he is found to be financially eligible to proceed in forma pauperis, he will not need to pay an initial partial payment of the \$150 fee for filing his complaint. In addition, he is not subject to the exhaustion requirements set out in 42 U.S.C. § 1997e.

From the affidavit of indigency petitioner has submitted to the court with his

complaint, I find that he is eligible financially to proceed in forma pauperis. Nevertheless, before I may grant petitioner leave to proceed, I must examine his complaint and dismiss any claim that is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks money damages against a defendant who is immune from such relief. 28 U.S.C. § 1915(e). In conducting this review, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972).

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

After petitioner filed a writ of certiorari against the Wisconsin Parole Commission, Judge Nolan of the Lincoln County Circuit Court ordered respondent Assistant Attorney General Steven Wickland to turn over all the evidence used by the Commission on August 6, 2003. Respondent Wickland turned over 416 pages of “evidence” from petitioner’s Parole Commission file but suppressed five pages, ## 211 to 216, that were favorable to petitioner. Those five pages consisted of a letter written by petitioner’s victim speaking of petitioner in favorable terms. Despite Judge Nolan’s order, respondent Wickland’s actions prevented both the circuit court and state court of appeals from viewing this letter.

DISCUSSION

Petitioner argues that respondent Wickland violated a court order when he failed to turn over all of the papers in the Parole Commission's file, which prevented other state courts from considering this "evidence." Petitioner fails to allege any facts about how the failure caused him injury. Nevertheless, respondent Wickland's alleged failure to comply with a court order issued by a Lincoln County circuit court judge is not a matter over which the federal court has jurisdiction. Any concern petitioner has about respondent's failure to comply with a state court order should be raised in the court that gave the order. Petitioner's request for leave to proceed in forma pauperis on his claim against respondents Wickland and the Wisconsin Department of Justice must be denied.

ORDER

IT IS ORDERED that petitioner Thomas L. Anderson is DENIED leave to proceed in forma pauperis on his claim that respondents Wickland and the Wisconsin Department of Justice violated a state circuit court order.

Entered this 29th day of June, 2004.

BY THE COURT:
BARBARA B. CRABB
District Judge