

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

CRAIG LEE MILLER,

Plaintiff,

v.

ORDER
07-C-276-S

PHIL KINGSTON,

Defendant.

Upon receipt of plaintiff's partial filing fee in the amount of \$15.66, the Court addresses the merits of plaintiff's complaint. According to 28 U.S.C. § 1915(b)(2), the institution's financial officer is authorized to deduct monthly payments from plaintiff's account until the \$350.00 filing fee is paid in full.

Plaintiff seeks to vacate his state court convictions. His proper remedy is under 28 U.S.C. §2254. His state petition for a writ of habeas corpus was dismissed in this Court in April 2002 as untimely. Plaintiff does not have a remedy under 42 U.S.C. § 1983 and his complaint must be dismissed for failure to state a claim under federal law.

Plaintiff has been previously advised on two prior occasions in Case Nos: 06-C-728-S and 07-C-257-S that his motion for summary judgment and complaint under 42 U.S.C. § 1983 do not state a claim for relief under federal law. Plaintiff's complaint in the above entitled matter is frivolous. Accordingly, he will be assessed a strike pursuant to 42 U.S.C. § 1915(g).

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that plaintiff's complaint and all claims contained therein is DISMISSED without prejudice.

IT IS FURTHER ORDERED that judgment be entered DISMISSING plaintiff's complaint and all claims contained therein without prejudice as frivolous.

IT IS FURTHER ORDERED that Plaintiff is assessed a strike under 42 U.S.C. §1915(g).

Entered this 23rd day of May, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge