

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

EDWIN E. JONES,

Petitioner,

v.

WILLIAM FRANCIS, Parole Agent, and
DONNA HEDRICH, Social Worker,

Respondents.

ORDER

08-cv-517-bbc

This is a proposed civil action for monetary and injunctive relief brought pursuant to 42 U.S.C. § 1983. Petitioner Edwin Jones, a patient at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin, requests leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. Petitioner has made his initial partial payment in accordance with 28 U.S.C. § 1915(b). However, the court is required to review the merits of his complaint to determine whether his claim must be dismissed as frivolous or malicious, for failure to state a claim on which relief may be granted or because petitioner is seeking money damages from a defendant who is immune from such relief. 28 U.S.C. §1915(e)(2). In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner,

404 U.S. 519, 521 (1972).

Petitioner alleges that respondents Francis and Hedrich have denied him his right to refuse medical treatment, in violation of his rights under the Fourteenth Amendment. From the facts alleged, I conclude that petitioner's action is a challenge to the conditions of his parole and such a challenge is not proper under § 1983. Therefore, his petition will be dismissed without prejudice because he must bring these claims as a petition for a writ of habeas corpus, 28 U.S.C. § 2254 after he has exhausted his remedies in state court.

In addition, petitioners Mark B. Evans, Richard McGowan and Willie Scott have asked to intervene in this action pursuant to Rule 24 (b)(1)(B). Because I am dismissing, petitioner Jones's complaint, the motion to intervene is denied as moot. (Petitioners may file their motions, either individually or collectively, as separate petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, if their claims are like petitioner Jones's claims, or as civil actions under 42 U.S.C. § 1983.)

In his complaint, petitioner Jones makes the following allegations of fact.

ALLEGATIONS OF FACT

Petitioner Edwin Jones is a patient who has been civilly committed as a sexually violent person under Wisconsin Statutes Chapter 980 at Sand Ridge Secure Treatment Center in Mauston, Wisconsin. Respondent William Francis is petitioner's parole agent.

He works at the Division of Community Corrections in Glendale, Wisconsin. Respondent Donna Hedrich is a social worker at Sand Ridge.

Petitioner was scheduled to be released from prison and begin serving his parole in the community on January 12, 2005. On January 10, 2005, Milwaukee County filed a petition, alleging that petitioner was a sexually violent person. In March of 2007, petitioner was indefinitely committed under Wisconsin Statutes Chapter 980. Petitioner has been diagnosed as suffering from paraphilia and antisocial personality disorder.

Respondent Hedrich and other staff at Sand Ridge have contacted respondent Francis in order to force petitioner to participate in the Sexually Violent Person treatment program. Defendant Francis has threatened petitioner that he will revoke his parole if he does not participate in the treatment program.

DISCUSSION

Petitioner alleges that respondents have conspired to compel him into a treatment program despite the fact that he is no longer criminally confined. Petitioner believes that he cannot be forced into medical treatment or penalized for refusing to participate in a treatment program. He contends that he has a liberty interest in refusing to undergo medical treatment. Although petitioner brings his claim as a violation of his constitutional rights, I understand petitioner to be challenging the conditions of his parole, specifically, the

condition that requires him to undergo treatment for people found sexually violent. If petitioner is claiming that this condition is unconstitutional, then petitioner must first bring this claim in a habeas corpus proceeding. Causes of action that question either conditions of parole or necessarily imply the invalidity of a parole revocation cannot be addressed under 42 U.S.C. § 1983. Heck v. Humphrey, 512 U.S. 477, 487 (1994); Williams v. Wisconsin, 336 F.3d 576, 579-580 (7th Cir. 2003) (conditions of parole define terms of confinement; therefore challenge to restrictions imposed by parole should be brought as writ of habeas corpus, not under § 1983). Because petitioner has not established the invalidity of either the conditions of his parole or his parole revocation by showing that he succeeded in a habeas corpus proceeding challenging the conditions or revocation proceedings, he cannot seek relief under § 1983.

Although petitioner may still seek relief by filing a habeas corpus action, this court cannot convert this action into one for habeas corpus on its own motion. The Court of Appeals for the Seventh Circuit has held that “[w]hen a plaintiff files a § 1983 action that cannot be resolved without inquiring into the validity of confinement, the court should dismiss the suit without prejudice” rather than convert it into a petition for habeas corpus. Copus v. City of Edgerton, 96 F.3d 1038, 1039 (7th Cir. 1996) (citing Heck, 512 U.S. 477). Therefore, petitioner's Fourteenth Amendment claims will be dismissed without prejudice.

Petitioner may raise his claims in a petition for a writ of habeas corpus, but he should

be aware that such a petition would have to be dismissed immediately unless petitioner can show that he has presented his claims to the Wisconsin courts and has been denied relief at the trial and appellate levels, 28 U.S.C. § 2254(b)(1)(A), or that there is no state corrective process available to him. 28 U.S.C. § 2254(b)(1)(B).

ORDER

IT IS ORDERED that

1. Petitioner's request to proceed in forma pauperis on his claim that respondents violated his Fourteenth Amendment right to refuse medical treatment will be DENIED without prejudice to his raising his claims in a petition for a writ of habeas corpus.

2. Petitioner is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the director at Sand Ridge Secure Treatment Center of that institution's obligation to deduct payments from petitioner's account until the filing fee has been paid in full.

3. Petitioners Mark B. Evans, Richard McGowan and Willie Scott's motion to intervene pursuant to Fed. R. Civ. P. 24 (b)(1)(B) is DENIED as moot.

Entered this 22nd day of October, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge