

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

RODNEY C. MOORE,

Plaintiff,

v.

DANE COUNTY CLERK OF COURTS,
DANE COUNTY COURTHOUSE,
HONORABLE JUDGE STEVEN EBERT
and ERIC OCELOTT MONTES (Clerk),

Defendants.

ORDER

09-cv-361-slc¹

This is the first of six lawsuits that plaintiff Rodney Moore, a Wisconsin prisoner, filed in this court in June 2009. In a previous order, dkt. #5, the magistrate judge concluded that plaintiff has no means to make an initial partial payment. 28 U.S.C. § 1915(b)(4).

In Moore v. Speech, 09-cv-23-slc, I instructed plaintiff numerous times that he may not challenge his convictions in the context of a civil lawsuit under 42 U.S.C. § 1983. Heck

¹ While this court has a judicial vacancy, it is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. At this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action. Therefore, for the purpose of issuing this order only, I am assuming jurisdiction over the case.

v. Humphrey, 512 U.S. 477 (1994); Preiser v. Rodriguez, 411 U.S. 475 (1973). Plaintiff is now trying the same tack in the context of separate case, but the rule is still the same. This case must be dismissed.

As with plaintiff's other filings, his complaint is difficult to understand. However, the gist of it seems to be that the judge trying his criminal case should have recused himself because the alleged victim was a "personal friend" of the judge. This is an issue that goes to the heart of Preiser and Heck. If I agreed with plaintiff that the state trial judge was biased against him (and thus violated plaintiff's due process rights), it would mean that his conviction is invalid. It is an issue should have been raised on direct appeal or in postconviction proceedings. Just because plaintiff was unsuccessful in his previous attempts to overturn his conviction does not mean he may try again in a civil action.

Plaintiff seems to have another, related claim against the judge, which is that he violated plaintiff's "religious beliefs by forcing [plaintiff] to file these lawsuits." Although plaintiff's theory is not clear, it seems to be that plaintiff's "religious belief" is to "turn the other cheek" and the judge has "forced" him to act contrary to that belief by violating plaintiff's rights. Even if plaintiff's claims were not barred by Heck (or absolute immunity, Pierson v. Ray, 386 U.S. 547, 554 (1967)), this claim would have no legal merit. Plaintiff must accept responsibility for *his choice* to file these lawsuits; no one is forcing him to do so.

ORDER

IT IS ORDERED that

1. This case is DISMISSED for plaintiff Rodney Moore's failure to state a claim upon which relief may be granted.

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

3. Plaintiff's motion to consolidate this case with case nos. 09-cv-363-slc, 09-cv-365-slc and 09-cv-366-slc, dkt. #6, is DENIED as moot.

4. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fees have been paid in full.

5. The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 20th day of July, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge