

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

DANIEL Z. MALDONADO,

Plaintiff,

v.

SUPERVISOR MICHAEL JOHNSON,
AGENT AMY WARD and
WISCONSIN DEPARTMENT OF CORRECTIONS,

Defendants.

ORDER

09-cv-599-bbc

Plaintiff Daniel Z. Maldonado has filed this proposed civil action for injunctive and monetary relief pursuant to 42 U.S.C. § 1983, alleging that defendants violated his constitutional rights and state law when they placed him under house arrest and electronic monitoring. Plaintiff has requested to proceed without prepayment of the court fees. Although it appears likely that plaintiff would qualify for indigent status and would not be required to prepay the fees, it is not necessary to perform that calculation because the complaint suffers from defects that require dismissal.

Plaintiff's complaint does nothing more than challenge his current confinement. He alleges that his parole agent, her supervisor and the Department of Corrections placed him

on house arrest and electronic monitoring when he was released from prison on his mandatory release date. As plaintiff should know from previous cases, e.g., Maldonado v. Nolet, 08-cv-279-bbc, slip op. at 5-6 (W.D. Wis., September 22, 2008), such challenges may not be brought pursuant to § 1983. Challenges to plaintiff's custody may not proceed in federal court until plaintiff has exhausted his state judicial remedies and then only as a petition for a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 93 (1973) (claims seeking immediate or speedier release from confinement cannot be brought under § 1983).

Although plaintiff is not in "custody" in the sense of being in prison, conditions of parole such as plaintiff's house arrest and electronic monitoring are still forms of "custody" that must be challenged in the context of a habeas petition, not a § 1983 action. Cf. Williams v. Wisconsin, 336 F.3d 576 (7th Cir. 2003) (because parolee's confinement is defined not by his placement in prison but by various lesser restrictions on his liberty, challenge to conditions of parole are challenge to parolee's custody and cannot be challenged under § 1983). Indeed, plaintiff acknowledges that he is challenging his custody. Dkt. #1, at 3 (arguing that although inmates such as plaintiff are at home, they are being held in "custody" by the state's imposition of restrictions on their freedom). Because plaintiff is challenging the conditions of his parole, his claims are not cognizable under § 1983 and must be dismissed.

ORDER

IT IS ORDERED that plaintiff Daniel Z. Maldonado's request for leave to proceed in forma pauperis on his claim that defendants violated his rights by placing him on house arrest and electronic monitoring after he was released from prison, dkt. #2, is DENIED and this case is DISMISSED as barred under Preiser v. Rodriguez, 411 U.S. 475 (1973), and Heck v. Humphrey, 512 U.S. 477 (1994).

Entered this 8th day of October, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge