

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

KONG PHENG VUE,

Plaintiff,

v.

LA CROSSE COUNTY COURTHOUSE and
LA CROSSE POLICE DEPARTMENT,

Defendants.

OPINION AND ORDER

11-cv-713-bbc

This is a proposed civil action for monetary relief, which I interpret as an action under 28 U.S.C. § 1983. Plaintiff Kong Pheng Vue is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and does not have the means to make an initial partial payment. (From the affidavit of indigency plaintiff submitted, I conclude that he is not a prisoner at this time and is therefore not subject to the requirements of the Prison Litigation Reform Act.) Because plaintiff is proceeding without prepayment of costs, I must screen his complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2)(B). In addressing any pro se

litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972).

All of plaintiff's allegations stem from grievances related to his ongoing criminal prosecution for strangulation, misdemeanor battery and disorderly conduct. From his sparse complaint, I understand plaintiff to be asserting five claims: (1) the police failed to inform him of his rights under Miranda v. Arizona, 384 U.S. 436 (1966), in violation of his Fifth Amendment right to be free from self-incrimination; (2) the police made false statements in the criminal complaint against him, which may violate his Fourth Amendment or due process rights, Jones v. Chicago, 856 F.2d 985, 992 (7th Cir. 1988); (3) the police prosecuted him maliciously for a crime he did not commit; (4) the court violated his due process rights by imposing electronic monitoring as a condition of bail; and (5) the police or the court violated his constitutional right to a speedy trial, Barker v. Wingo, 407 U.S. 514 (1972).

Plaintiff will be denied leave to proceed on his claims and the complaint will be dismissed, because the defendants named in the complaint are not entities that can be sued. La Crosse County Courthouse is a physical structure, not subject to suit. Plaintiff alleges that he was treated unfairly in his criminal cases at the La Crosse County Courthouse, but he does not identify who violated his rights or what specific actions they took. Insofar as plaintiff believes he is being treated unfairly in his criminal case, he should be aware that

neither judges nor prosecutors may be sued under § 1983 for official acts they take in the context of judicial proceedings. Loubser v. Thacker, 440 F.3d 439, 442 (7th Cir. 2006); Smith v. Power, 346 F.3d 740 (7th Cir. 2003). Although this rule may seem unfair to plaintiff, the Supreme Court has determined that these officials would be unable to perform their essential duties if they were subjected to suit by every dissatisfied litigant. Imbler v. Pachtman, 424 U.S. 409 (1976); Pierson v. Ray, 386 U.S. 547, 554 (1967).

The La Crosse Police Department is also not a suable entity. Under Federal Rule of Civil Procedure 17(b), state law determines whether a particular entity has the capacity to be sued. Wisconsin municipalities may be sued, Wis. Stat. § 62.25, but individual agencies and departments may not, including police departments. Lawrence v. Lewandowski, No. 08-C-108, 2009 WL 2950611, *7 (E.D. Wis. Sept. 9, 2009) (dismissing Wauwatosa police department as defendant and substituting City of Wauwatosa). See also Sow v. Fortville Police Dept., 636 F.3d 293, 300 (7th Cir. 2011) (Indiana police department not suable entity under § 1983); Chan v. Wodnicki, 123 F.3d 1005, 1007 (7th Cir. 1997) (Chicago Police Department not suable entity). Litigants seeking redress for wrongs committed by the police must usually sue either the officers who violated their rights or the municipality that has authority over the police department.

ORDER

Accordingly, IT IS ORDERED that

1. Plaintiff Kong Pheng Vue is DENIED leave to proceed on all claims, and the case is DISMISSED without prejudice; and
2. The clerk of court is directed to close the file.

Entered this 15th day of December, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge