

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

MOEKETSI MOLAOLI,

Plaintiff,

v.

PHYLLIS REED,

Defendant.

OPINION AND ORDER

13-cv-540-bbc

In this proposed civil action, plaintiff Moeketsi Molaoli seeks to proceed on claims under 42 U.S.C. § 1983 against defendant Phyllis Reed regarding his December 2012 arrest in Rock County, Wisconsin. On January 30, 2014, I gave plaintiff an opportunity to amend his complaint for the second time to state a claim upon which relief may be granted. Dkt. #15. He failed to respond by the deadline, so his case was dismissed. Dkt. #16. Now, plaintiff has filed a response to this order that I construe as a supplement to his amended complaint and a motion that I construe as a request to reopen his case on the ground that he did not receive notification of the court's order in time to file a timely response. Dkt. #17.

On the second issue, plaintiff says that he was ordered to leave his apartment and he did not have an address for some period of time after that, so he did not receive the January 30 order until around February 18, 2014. (He has filed and signed an affidavit in which he

affirms these allegations. Dkt. #18.) Although that may be a reasonable ground for plaintiff's tardiness, I am denying plaintiff's motion to reopen his case because he still fails to state a claim upon which relief may be granted, so reopening the case would be futile.

Throughout this suit, plaintiff has contended that defendant Phyllis Reed caused him to be detained wrongfully and that she unlawfully infringed his right to contact his children because she is racially biased against plaintiff. In the January 30 order, I dismissed plaintiff's claims about contact with his children because this claim challenges a condition of his confinement (a challenge to his sentence), which he cannot bring in a § 1983 lawsuit. Heck v. Humphrey, 512 U.S. 477 (1994).

I also told plaintiff that in order to state a claim under Fed. R. Civ. P. 8, he would have to further explain his contention that his detention was unlawful and allege facts about the process he received before and during his detention. In response, plaintiff says that he did not receive a hearing at any time. Dkt. #17, at 1. However, just a few sentences after this allegation, plaintiff says that his detention was "ordered" by a county judge. Id. Thus, it continues to be unclear whether plaintiff received process pursuant to his detention. I concluded that he has failed to state a claim that his rights to due process were violated.

Furthermore, plaintiff says that defendant made him sign a document "under duress." I instructed plaintiff to explain what the document was and what effect it had on his detention, as well as why he believed he was "under duress." In response, plaintiff says that the document was blank and that he felt under duress because (1) he had a fever; (2) a Rock County prosecutor told him that if he did not sign the document, he would be detained in

jail until defendant decided to let him out; and (3) defendant said that “a lot more [would] happen” if he did not sign. Dkt. #17, at 1. However, plaintiff still does not explain what the document was or what effect it had on his detention. In other words, he does not show that he experienced an injury. If anything, it appears that plaintiff may have spent less time in jail as a result of signing. Plaintiff has therefore failed to state a claim on these facts.

In plaintiff’s amended complaint, he alleged that defendant “failed to protect” him. In the January 30 order I told plaintiff to explain what he meant by this allegation and to explain why he believed defendant had a duty to protect him. In response, plaintiff says that defendant “ranksacked and sealed of[f]” his house and allowed fifteen police officers to enter his home to look for a rifle. Dkt. #17, at 2. Plaintiff has also failed to state a claim on these facts. He admits the police and defendant conducted their search for a reason (to look for a rifle), and he does not say that they entered without his consent or probable cause (or reasonable suspicion, in the case of probationers and parolees), a necessary element to a claim for unreasonable search or seizure. Mucha v. Village of Oak Brook, 650 F.3d 1053, 1056 (7th Cir. 2011); Knox v. Smith, 342 F.3d 651, 657 (7th Cir. 2003).

Plaintiff adds to this filing one final allegation, which is that he was forced to wear an electronic ankle monitor to track his movements. He says this was done for no reason. Plaintiff may be attempting to bring a due process claim, but he does not explain why defendant is responsible for his wearing an ankle monitor, so he has failed to state a claim against her. Morfin v. City of East Chicago, 349 F.3d 989, 1001 (7th Cir. 2003) (personal responsibility is an element of any § 1983 claim).

Plaintiff has been given multiple opportunities to state a claim in this lawsuit and he has failed to do so. It would be futile to reopen his case, as he has requested, so his motion to do so will be denied.

ORDER

IT IS ORDERED that plaintiff Moeketsi Molaoli's motion to reopen his case, dkt. # 17, is DENIED.

Entered this 19th day of March, 2014.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge