

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

WAYNE D. MURPHY,

Plaintiff,

OPINION AND ORDER

v.

13-cv-72-wmc

SHAUN O'CONNELL, *et al.*,

Defendants.

Plaintiff Wayne D. Murphy has filed this proposed action pursuant to 42 U.S.C. § 1983, alleging that certain conditions of his state parole were imposed and enforced in violation of his civil rights. Murphy requests leave to proceed without prepayment of fees or costs. Therefore, the court must review the proposed complaint to determine if his allegations are (1) frivolous or malicious; (2) fail to state a claim upon which relief may be granted; or (3) seek money damages from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). Having considered all of the pleadings, the court will deny leave to proceed and dismiss the complaint for the reasons that follow.

ALLEGATIONS OF FACT

In addressing any *pro se* litigant's complaint, the court must read the allegations generously. *See Haines v. Kerner*, 404 U.S. 519, 521 (1972). The court accepts plaintiff's well-pleaded allegations as true and assumes the following probative facts.¹

¹ Because Murphy's complaint takes issue with the terms of his state parole, the court has supplemented the facts with dates and procedural information about his underlying conviction from

Murphy is a resident of Wonewoc (Juneau County), Wisconsin. He has filed this civil action against four state officials employed by the Wisconsin Department of Corrections in Madison, including his current parole agent (Shaun O'Connell), two former parole agents (Amy Bell, Christopher Nolet), and their supervising field officer (Bill Lazar).

In 1992, Murphy was charged with two counts of first-degree sexual assault and one count of aggravated battery in Dane County Case No. 92CF620. Murphy was convicted of those charges upon his plea of "no contest." On March 25, 1993, the Dane County Circuit Court sentenced Murphy to 12 years of imprisonment. In 2001, Murphy was released from prison. He is currently serving a 20-year term of extended supervision or parole.

Murphy does not challenge the validity of his underlying conviction or his sentence here. Instead, he takes issue with certain conditions imposed upon his parole. In particular, Murphy alleges that defendant O'Connell ordered him to wear a GPS tracking device on November 30, 2011, after Murphy gave a "deceptive" response during a lie-detector test. On December 29, 2011, Murphy's release was reportedly revoked and he "was sent to the Dane County Jail for not being where he told agent O'Connell he would be" on Christmas. After his release from jail on February 3, 2012, Murphy remained subject to electronic monitoring with the added restriction of "home confinement" for up to 12 hours a day. Murphy contends that these conditions are excessive and constitute an "egregious abuse" of Department of Corrections' policy. Murphy, who is African American, contends further that the conditions imposed by O'Connell are discriminatory because "European Americans" are not treated in this manner.

the electronic docket available at Wisconsin Circuit Court Access, <http://wcca.wicourts.gov> (last visited June 7, 2013).

Defendant Bell, who was Murphy's parole officer from 2008 through 2011, also reportedly revoked his supervised release in 2010, sending him to a secure detention facility for 56 days after he failed to report to the parole office as required on Halloween. Murphy claims that Bell also placed unreasonable restrictions on his ability to own a computer or to access the Internet and his ability to visit public libraries without permission. As a "self-published author," Murphy maintains that these restrictions interfered with his right to free speech, among other things.

Murphy alleges further that defendant Nolet denied him access to the Internet in 2002, which caused "irreparable harm to [Murphy's] life, liberty and the career pursuits leading to his happiness." While Murphy was under Nolet's supervision in 2002, he was reportedly required to attend "group meetings" with other African American "clients." Murphy characterizes these as "Jim Crow groups" because there were no "white" clients in attendance. Murphy contends that Nolet is a racist because his "non-white clients" were punished for parole violations, whereas white clients were not.

Murphy maintains that O'Connell, Bell and Nolet imposed unduly restrictive conditions on his parole for discriminatory reasons in violation of the First Amendment, the Eighth Amendment, the Fourteenth Amendment Due Process Clause and the Equal Protection Clause. Murphy contends further that, as a supervisory parole officer, defendant Lazar approved of the wrongful actions taken by O'Connell, Bell and Nolet or failed to prevent the violation of his constitutional rights. Murphy seeks injunctive relief in the form of immediate release from the restrictive rules governing his parole. He also seeks compensatory and punitive damages for the restrictions on his access to the Internet or

public libraries, as well as \$1000 for each day that he was “falsely imprisoned” by a GPS tracking device.

OPINION

As an initial matter, Murphy seeks relief from restrictive rules and conditions on parole as they have been applied to him. He does not identify or take issue with a particular state program or policy. *See, e.g., McKune v. Lile*, 536 U.S. 24 (2002) (challenging the validity of a state sexual abuse treatment program); *Doe v. Prosecutor, Marion County, Ind.*, 705 F.3d 694 (7th Cir. 2013) (challenging a state statute that prohibits registered sex offenders from using social networking sites, instant messaging services, and chat programs). Under these circumstances, it is well established that 42 U.S.C. § 1983 may not challenge the “fact or duration of confinement,” which includes supervised release on parole. *See Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005); *Savory v. Lyons*, 469 F.3d 667, 670-71 (7th Cir. 2006); *Williams v. Wisconsin*, 336 F.3d 576, 579-80 (7th Cir. 2003); *see also Drollinger v. Milligan*, 552 F.2d 1220, 1224 (7th Cir. 1977) (reasoning that “terms and conditions” of probation or parole place a petitioner “in custody” for purposes of the federal habeas corpus statutes, meaning that such challenges are not appropriately raised in a § 1983 action). Because a writ of habeas corpus is the only vehicle for such a claim, *Prieser v. Rodriguez*, 411 U.S. 475, 500 (1973), Murphy’s request for injunctive relief must be dismissed, though without prejudice to his pursuing those claims under 28 U.S.C. § 2254. *See Williams*, 469 F.3d at 479; *Harris v. Indiana Parole Bd.*, No. 06-cv-041, 2007 WL 1650932 (N.D. Ind. June 4, 2007) (addressing the validity of parole conditions in a federal habeas corpus proceeding).

To the extent that Murphy also seeks monetary damages for restrictions imposed in the past, his claim for relief also fails, since success on the merits would necessarily imply the invalidity of conditions that resulted in his confinement. *See, e.g., Antonelli v. Foster*, 104 F.3d 899, 901 (7th Cir. 1997) (distinguishing claims related to confinement from other allegations of official misconduct). To prevail in a civil rights action stemming from a prisoner’s “unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid,” the plaintiff must prove “that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determinations, or called into question by a federal court’s issuance of a writ of habeas corpus [under] 28 U.S.C. § 2254.” *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). A claim that bears a relationship to a conviction or sentence that has not been so invalidated is not cognizable under 42 U.S.C. § 1983. *Id.*

Given that a judgment in favor of the plaintiff here would necessarily imply the invalidity of certain conditions imposed on his parole, the complaint must be dismissed unless the plaintiff can demonstrate that the conditions imposed have been set aside. As noted above, Murphy claims that defendants O’Connell and Bell wrongfully revoked his supervised release on separate occasions in 2010 and 2011, resulting in his return to jail or to a secured detention facility for failure to abide by the conditions of his parole. Even if true, Murphy’s allegations necessarily call into question the validity of those proceedings. Murphy does not allege that any of his parole conditions were challenged by filing a motion to modify in state court or by a federal habeas corpus proceeding under 28 U.S.C. § 2254. Absent such

a showing, the rule in *Heck* precludes a claim for damages. It follows that Murphy's complaint must be dismissed for failure to state a claim upon which relief may be granted pursuant to 42 U.S.C. § 1983.

ORDER

IT IS ORDERED that:

1. The motion for leave to proceed *in forma pauperis* is DENIED, and the complaint filed by Wayne D. Murphy is DISMISSED for failure to state a claim under 42 U.S.C. § 1983.
2. Murphy's motion for appointment of counsel is DENIED.
3. The clerk's office is directed to close this case.

Entered this 12th day of June, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge