

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

MICHAEL YOUNG,

Plaintiff,

OPINION AND ORDER

v.

13-cv-582-wmc

THE EAU CLAIRE WISCONSIN CITY
POLICE STATION, ZACH BURNETT,
and STEPHANIE SANDBECK,

Defendants.

Plaintiff Michael Young alleges that the Eau Claire Wisconsin police department and officers Zach Burnett and Stephanie Sandbeck violated his constitutional rights by (1) informing him that he could not trespass on private property to collect aluminum cans and (2) threatening to arrest him for trespassing. Plaintiff was granted leave to proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915, after the court concluded that plaintiff was unable to prepay the fee for filing this lawsuit. (Dkt. #3.) The next step is determining whether any of plaintiff's proposed claims (1) are frivolous or malicious; (2) fail to state a claim on which relief may be granted; or (3) seek money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Because the plaintiff has failed to state a claim on which relief may be granted, the court will deny him leave to proceed.

ALLEGATIONS OF FACT

In addressing any *pro se* litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of this screening

order, the court assumes the following, potentially material facts based on the allegations in Young's complaint:

- On July 20, 2013, Young was picking up aluminum cans at an apartment building. A person who resides in the apartment building told Young that he was not welcome on the property and that he should leave the property at once.
- Young complied, although he questions the tenant's authority to instruct him to leave the property since she does not own it.
- Approximately five minutes after this exchange, while Young was traveling several blocks from the apartment building, he was "approached and detained" by Eau Claire police officers Zach Burnett and Stephanie Sandbeck.
- The officers informed him that if anyone made another telephone call to the police about him looking for aluminum cans in their trash, they were going to arrest him for trespassing and disorderly conduct.

OPINION

While Young uses the term "falsely arrested" in his complaint, his specific allegations do not support such a claim or characterization of his treatment by the Eau Claire police. Rather, Young's specific factual allegations establish that he was simply stopped by these police officers and warned that he would be subject to arrest should he continue to trespass on private property in search of aluminum cans.

Even if Young had been detained for a short period of time, Young's acknowledgement that he trespassed onto private property provides a basis for the officers to stop him, thus foreclosing any Fourth Amendment claim. *See, e.g., Rabin v. Flynn*, 725 F.3d 628, 632 (7th Cir. 2013) ("Generally speaking, the Fourth Amendment permits officers to perform an investigatory stop if they have a reasonable and articulable suspicion of wrongdoing.").

Indeed, even if he had been arrested, Young's admission that he trespassed onto private property, forecloses a finding that the police officers lacked probable cause to arrest him. As explained by this court in a separate opinion denying Young leave to proceed on a different false arrest claim,¹ "[p]robable cause exists if 'at the time of the arrest, the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent person, or one of reasonable caution, [to believe] . . . that the suspect has committed, is committing, or is about to commit an offense.'" *Mucha v. Vill. of Oak Brook*, 650 F.3d 1053, 1056 (7th Cir. 2011) (quoting *Gonzalez v. City of Elgin*, 578 F.3d 526, 537 (7th Cir. 2009)). Here, Young admits to entering private property in violation of Wis. Stat. § 943.13.

As for Young's assertion that he should be able to collect aluminum cans wherever he pleases: he is simply wrong. Regardless of whether these cans have been placed in the trash, Young has no right to enter private property in search of them. *United States v. Hedrick*, 922 F.2d 396, 400 (7th Cir. 1991) (describing members of the public searching through garbage cans on private property as trespassing).

ORDER

IT IS ORDERED that:

- 1) plaintiff Michael Young's motion for leave to proceed is DENIED;
- 2) plaintiff's claims are dismissed; and

¹ *Young v. Eau Claire Wisconsin City Police Station*, No. 12-cv-840-wmc (W.D. Wis. Oct. 3, 2013) (dkt. #9).

3) Young's request for assistance in recruiting counsel is DENIED as moot.
Entered this 2nd day of December, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge