

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

MICHAEL B. KINGSLEY,

Plaintiff,

v.

DENISE SYMDON, LANCE WIERSMA,
MICHELE KRUEGER and BEN SEARLS,

Defendants.

OPINION AND ORDER

14-cv-548-bbc

In this civil action under 42 U.S.C. § 1983, pro se plaintiff Michael B. Kingsley has filed a proposed complaint, together with a motion for a temporary restraining order and a preliminary injunction in which he contends that his conditions of extended supervision are unconstitutional. Under 28 U.S.C. § 1915A, I must screen plaintiff's complaint and dismiss it if it is legally frivolous, malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who is immune from suit. Further, I must determine whether plaintiff is entitled to injunctive relief. Because I conclude that plaintiff cannot recover the relief he seeks under § 1983 and because his claims are barred by Heck v. Humphrey, I am dismissing his complaint and denying his motion.

OPINION

Plaintiff is a prisoner at the Wisconsin Resource Center and is scheduled to be

released from prison under extended supervision on October 7, 2014. The conditions for plaintiff's extended supervision include requirements that he must live for a period of time in a halfway house, complete a treatment program and wear an electronic monitoring ankle bracelet. He argues that these conditions violate the Fourth, Fifth, Eighth and Fourteenth Amendments because they are equivalent to a punishment. In addition, he says that he was sentenced under Wis. Stat. § 973.01(2), which provides for bifurcated sentences involving time in prison and time on extended supervision. Thus, he argues that an extended supervision condition that is equivalent to confinement violates that statute and constitutes an unlawful seizure under the Fourth Amendment. Plaintiff asserts that his lawsuit is a "Civil Rights action brought under 42 U.S.C. § 1983," Plt.'s Mot., dkt. #2, at 1, and he asks for "declaratory, injunctive, and monetary relief." Plt.'s Cpt., dkt. #1, at 1.

The relief plaintiff seeks is unavailable to him. Declaratory and injunctive relief that alter a criminal sentence are available only through petitions for writs of habeas corpus, which a party cannot file until after he has exhausted his avenues for relief in state court. Wilkinson v. Dotson, 544 U.S. 74, 79 (2005) ("[A] § 1983 action will not lie when a state prisoner challenges the fact or duration of his confinement,' and seeks either 'immediate release from prison,' or the 'shortening' of his term of confinement.") (quoting Preiser v. Rodriguez, 411 U.S. 475, 482, 489 (1973)). Further, plaintiff's claim for damages is not ripe because plaintiff has not been released to the allegedly unconstitutional conditions of his extended supervision.

Under Heck v. Humphrey, 512 U.S. 477, 487 (1994), persons in plaintiff's position

cannot use a civil action to challenge the validity of a conviction or sentence. Plaintiff “asserts his claim is not barred under Heck v. Humphrey,” Plt.’s Cpt., dkt. #1, at 3, but he is wrong. Even if the conditions of extended supervision include such requirements as completing treatment and monitoring programs, such conditions are considered part of the plaintiff’s sentence and he may not challenge them in a § 1983 action unless he can show that his conviction or sentence was overturned before he brought the action. Williams v. Wisconsin, 336 F.3d 576, 579 (7th Cir. 2003) (holding that Heck barred plaintiff’s § 1983 action challenging parole conditions because “the ‘conditions’ of parole are the confinement. Requirements that parolees stay in touch with their parole officer, hold down a job, steer clear of criminals, or . . . obtain permission for any proposed travel outside the jurisdiction, are what distinguish parole from freedom.”). Plaintiff has not made that showing in this case.

Finally, plaintiff cannot proceed under § 1983 on claims that the conditions of his extended supervision violate Wisconsin statutes because “42 U.S.C. § 1983 protects plaintiffs from constitutional violations, not violations of state laws.” Scott v. Edinburg, 346 F.3d 752, 760 (7th Cir. 2003).

Plaintiff’s failure to state a claim upon which relief may be granted means that he is not entitled to injunctive relief. Accordingly, I am dismissing his complaint and denying his motion for a temporary restraining order and a preliminary injunction.

ORDER

IT IS ORDERED that

1. Plaintiff Michael B. Kingsley is DENIED leave to proceed on his claim that the conditions of his extended supervision violate the United States Constitution. Plaintiff's complaint is DISMISSED for failure to state a claim upon which relief may be granted.

2. A strike will be recorded in accordance with 28 U.S.C. § 1915(g).

3. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the officials at the Wisconsin Resource Center of that institution's obligation to deduct payments until the filing fee has been paid in full.

4. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 9th day of September, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge