

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

GREGORY R. URBAN,

Plaintiff,

v.

DIANE M. FREMGEN,

Defendant.

OPINION and ORDER

14-cv-275-jdp

Plaintiff Gregory Urban has filed a proposed civil complaint against the clerk of the Wisconsin Supreme Court for violating his right to due process by dismissing his petition for review as untimely. Urban has been granted leave to proceed *in forma pauperis* with his claims based on the affidavit he submitted of his indigency. Because Urban is proceeding *in forma pauperis*, I must screen Urban's complaint and dismiss any portion that is legally frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915. In addressing any pro se litigant's complaint, I must read the allegations of the complaint generously. *McGowan v. Hulick*, 612 F.3d 636, 640 (7th Cir. 2010). After reviewing Urban's complaint, I conclude that his claims are precluded by the *Rooker-Feldman* doctrine and the case will be dismissed.

The following facts are drawn from Urban's complaint and the state of Wisconsin's online court records.

ALLEGATIONS OF FACT

On January 3, 2013, Urban was issued a trespassing citation and subsequently pleaded not guilty. On the day of his trial, June 25, 2013, Urban failed to appear and the Wisconsin Circuit Court entered a default judgment against him. On July 15, 2013, Urban wrote the circuit court a letter explaining that he missed the trial because he had car trouble. He requested a retrial, which the court denied. Urban appealed the denial to the Wisconsin Court of Appeals, which re-characterized his request as a motion to reopen a default judgment. The court of appeals denied Urban's motion and affirmed the lower court decision on February 11, 2014.

After the court of appeals issued its decision, Urban had thirty days to submit a petition for review of that decision to the Wisconsin Supreme Court. Wis. Stat. § 808.10(1). Although Urban asserts that he filed his petition with the local clerk of court on March 10, 2014 to send it to the supreme court, it did not arrive until March 14, 2014, thirty-one days after the issuance of the decision.¹ That same day, the supreme court dismissed the motion as untimely made. On April 1, 2014, the supreme court received a letter from Urban regarding his denied petition for review, which it characterized as a motion for reconsideration of his petition for review. The supreme court, through its clerk (Fremgen) and commissioner dismissed the motion for reconsideration on April 4, 2014.

¹ Urban further asserts his belief that the local clerk of court called Defendant Diane M. Fremgen to notify her that Urban was submitting a petition "so that [Fremgen] would not pick up the petition from the mail" and then "she could claim" that Urban "did not file in time."

Urban then submitted a proposed civil complaint to this court, requesting that it either order the Wisconsin Supreme Court to accept his petition for review or conduct its own review of the original default judgment against him.

ANALYSIS

Urban states that Fremgen violated his right to due process by issuing the Wisconsin Supreme Court's denial of his petition for review. His proposed civil complaint is essentially an attempted appeal of that court's decision, which is barred by the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine precludes federal district courts from reviewing the final judgments of state courts, even where a plaintiff alleges that the state court's actions violated his constitutional rights.² *Young v. Murphy*, 90 F.3d 1225, 1230 (7th Cir. 1996) (citing *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983)); see also *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

Urban does not allege that the Wisconsin Supreme Court procedure itself is unconstitutional. He is only alleging that its application in his case was an unconstitutional deprivation of his due process right. He is claiming the state court's final judgment against him caused him injury, but this court does not have jurisdiction to review that judgment. Urban has already appealed his claim through the Wisconsin state court system, thus the only avenue left to him in pursuing his claim is an appeal to the United States Supreme Court. *Garry v. Geils*, 82 F.3d 1362, 1365 (7th Cir. 1996).

Because Urban cannot proceed on his claim in this court, I must dismiss this lawsuit.

² The exception to this general principle is habeas corpus, in which state court decisions may be reviewed in federal district court, according to 28 U.S.C. § 2254(a). Habeas corpus does not apply in this case because Urban is not "in custody pursuant to the judgment of a State court," as is required by the statute. *Id.*

ORDER

IT IS ORDERED that:

1. Plaintiff Gregory Urban is DENIED leave to proceed on his due process claim.
2. This case is DISMISSED for Urban's failure to state a claim upon which relief may be granted.
3. The clerk of court is directed to enter judgment in favor of defendants and close this case.
4. Urban is obligated to pay the unpaid balance of his filing fees.

Entered this 15th day of July, 2014.

BY THE COURT:

/s/

JAMES D. PETERSON

District Judge