

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

JESUS RODRIGUEZ,

Plaintiff,

v.

OPINION & ORDER

DEBBIE FRITZ, KRISTEN ASCHENBRENNER, and
BEVERLY DILLION,

15-cv-255-jdp

Defendants.

Pro se plaintiff Jesus Rodriguez is a prisoner in the custody of the Wisconsin Department of Corrections currently housed at the John C. Burke Correctional Center, located in Waupun, Wisconsin. Plaintiff has filed a complaint alleging that his parole officers and their supervisor incorrectly placed him on sex offender supervision, in violation of his due process rights. The court granted plaintiff leave to proceed *in forma pauperis*, and plaintiff paid the initial partial filing fee set by the court. Dkt. 5.

The next step is for the court to screen the complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915A. After considering plaintiff's allegations, I will grant him leave to proceed on his Fourteenth Amendment procedural due process claim. I will dismiss plaintiff's separate claim that defendants incorrectly placed him on sex offender supervision. I will deny plaintiff's motion for assistance recruiting counsel at this time.

ALLEGATIONS OF FACT

On October 14, 2008, defendant Kristen Aschenbrenner, plaintiff's parole officer, placed plaintiff on sex offender supervision and "bracelet monitoring." Defendant Aschenbrenner made the decision without affording plaintiff an opportunity to be heard. Plaintiff maintains that he has never been convicted of a sex crime. Plaintiff complained to defendant Beverly Dillion, a probation and parole supervisor, in June 2009. Defendant Dillion told plaintiff to resolve his concerns with defendant Aschenbrenner. At some point, defendant Debbie Fritz, another parole officer, intervened and told plaintiff that his 1994 false imprisonment conviction qualified him as a sex offender.

About one year later, defendant Aschenbrenner transferred plaintiff's case to defendant Fritz. Defendant Fritz eventually commenced revocation proceedings against plaintiff for violating sex offender restrictions. On June 21, 2010, a judge revoked plaintiff's parole for "category 3 sex offender punishment."

Plaintiff alleges that defendants incorrectly placed him on sex offender supervision and that the unwarranted restrictions "sabotage[d]" his parole and undermined his liberty. Plaintiff alleges that he was forced to attend sex offender programs and to "admit to sex crimes I never committed, otherwise my agent would revoke my parole." Plaintiff lists the various ways in which his status as a sex offender has restricted his freedom, including the fact that it forced him to quit his job.

Plaintiff maintains that he has never been convicted of any sex crime because the 1994 false imprisonment conviction: (1) did not involve a minor; and (2) did not involve any sexual motive or component. Plaintiff seeks an injunction prohibiting defendants from imposing sex offender supervision restrictions on plaintiff until he has had the opportunity to

be heard and has received due process; \$50,000 in compensatory damages; and, seemingly unrelated to plaintiff's allegations, an "interstate compact transfer" to Houston, Texas. Dkt. 1, at 9.

ANALYSIS

Plaintiff brings a Fourteenth Amendment procedural due process claim, pursuant to 42 U.S.C. § 1983: plaintiff contends that he did not receive due process before defendants decided to place him on sex offender supervision. Plaintiff separately contends that defendants incorrectly placed him on sex offender supervision because his 1994 false imprisonment conviction does not qualify as a sex crime. I will address each claim in turn.

A. Fourteenth Amendment procedural due process claim

The Fourteenth Amendment's Due Process Clause prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, § 1. To state a § 1983 procedural due process claim, plaintiff must allege that he: (1) has a cognizable liberty or property interest; (2) suffered a deprivation of that interest; and (3) did not receive due process. *Khan v. Bland*, 630 F.3d 519, 527 (7th Cir. 2010).

At this point, plaintiff has stated a Fourteenth Amendment procedural due process claim. With respect to the first element, plaintiff alleges that he has a liberty interest in being free from sex offender parole restrictions. At this point, I cannot say definitively whether this interest, by itself, qualifies as a constitutionally protected liberty interest; to be labeled a sex offender is severely stigmatizing, but freedom from stigma is not, by itself, a protected liberty interest. *Paul v. Davis*, 424 U.S. 693, 712 (1976) ("[W]e hold that the interest in reputation asserted in this case is neither 'liberty' nor 'property' guaranteed against state deprivation

without due process of law.”). But plaintiff also alleges that being placed on sex offender supervision subjected him to a list of tangible restrictions and even landed him back in prison after a judge revoked his parole. For purposes of screening, plaintiff has alleged a deprivation of some liberty interest.

With respect to the remaining element, plaintiff alleges that defendants deprived him of this interest without due process. Plaintiff has specifically implicated each of the three named defendants for their role in placing plaintiff on sex offender supervision. And although the Supreme Court has already determined that individuals placed on a state’s sex offender registry by virtue of a qualifying conviction are not entitled to any pre-registration opportunity to be heard, *see Conn. Dep’t of Pub. Safety v. Doe*, 538 U.S. 1 (2003), I do not know what went into defendants’ decision to place plaintiff, a parolee, on sex offender supervision. I will take this opportunity to forewarn plaintiff that if it turns out that defendants placed plaintiff on sex offender supervision simply because of a qualifying conviction, the Supreme Court has already determined that plaintiff would not have been entitled to any pre-deprivation process. But because plaintiff’s complaint does not explain what went into the parole determination, or whether he received *any* process whatsoever, I will allow plaintiff to proceed on his Fourteenth Amendment procedural due process claim, for now.

B. Incorrectly placed on sex offender supervision

Somewhat in conjunction with his procedural due process claim, plaintiff alleges that defendants incorrectly placed him on sex offender supervision because he has never been convicted of a sex crime. Plaintiff represents that the “qualifying” conviction in play is his 1994 false imprisonment conviction, pursuant to Wis. Stat. § 940.30. The Wisconsin sex

offender reporting requirements statute, § 973.048, provides that a court may require an individual convicted under chapter 940 to comply with sex offender reporting requirements “if the court determines that the underlying conduct was sexually motivated . . . and that it would be in the interest of public protection to have the person report[.]” It also provides that a court *shall* require an individual convicted under § 940.30 to report, “if the victim was a minor and the person was not the victim’s parent[.]” Wis. Stat. § 973.048(2m).¹ And Wisconsin’s sex offender registration statute explicitly provides that an individual convicted under § 940.30 has committed a “sex offense” “if the victim was a minor and the person who committed the violation was not the victim’s parent.” Wis. Stat. § 301.45(1d)(b).

Plaintiff contends that his false imprisonment conviction does not qualify as a sex crime because it did not involve a minor or any sexual component. Plaintiff is essentially asking me to order defendants—state officials—to apply Wisconsin state law correctly. Because federal courts cannot instruct state officials to correctly comply with state law, I will dismiss this aspect of plaintiff’s complaint. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) (“[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment.”).

C. Motion for assistance recruiting counsel

Plaintiff has also filed a motion for assistance recruiting counsel. Dkt. 7. I will deny this motion without prejudice to plaintiff renewing his request later in this case. Litigants in

¹ “[U]nless the court determines, after a hearing on a motion made by the person, that the person is not required to comply[.]” Wis. Stat. § 973.048(2m).

civil cases do not have a constitutional right to a lawyer, and the court has discretion to determine whether assistance recruiting counsel is appropriate in a particular case. *Pruitt v. Mote*, 503 F.3d 647, 654, 656 (7th Cir. 2007). To prove that assistance is necessary, this court generally requires that a pro se plaintiff: (1) provide the names and addresses of at least three lawyers who declined to represent him in this case; and (2) demonstrate that his is one of those relatively few cases in which it appears from the record that the legal and factual difficulty of the case exceeds his demonstrated ability to prosecute it. *Id.* at 655; *see also Young v. Cramer*, No. 13-cv-77, 2013 WL 5504480, at *2 (W.D. Wis. Oct. 3, 2013).

Not only has plaintiff failed to demonstrate that he has made any effort to locate an attorney, but it is too early in the case to determine whether the legal and factual difficulty of the case exceeds plaintiff's ability to prosecute it. The case has not passed the relatively early stage in which defendants may file a motion for summary judgment based on exhaustion of administrative remedies, which could result in dismissal of this case before it advances very far. Should the case pass the exhaustion stage, and should plaintiff continue to believe that he is unable to litigate the suit himself, then he may renew his motion.

ORDER

IT IS ORDERED that:

1. Plaintiff Jesus Rodriguez is GRANTED leave to proceed on his Fourteenth Amendment procedural due process claim against defendants Debbie Fritz, Kristen Aschenbrenner, and Beverly Dillion.
2. Plaintiff's separate claim that defendants incorrectly placed him on sex offender supervision is DISMISSED.
3. Plaintiff's motion for assistance recruiting counsel, Dkt. 7, is DENIED.

4. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendants. Plaintiff should not attempt to serve defendants on his own at this time. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.
5. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.
6. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.
7. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for his failure to prosecute it.

Entered May 9, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge