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

JOHNSON CARTER,

Plaintiff,

v.

DEREK DURANTE, CONNIE ELBE, CANDACE ROBERTS, and CATIR DENFELD-QUIROS,

Defendants.

OPINION & ORDER

18-cv-943-wmc

Plaintiff Johnson Carter filed this complaint pursuant to 42 U.S.C. § 1983, alleging that defendants, his probation officers, violated his constitutional rights in pursuing a no-contact order between Carter and his fiancé. The court has determined that Carter may proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915, and his complaint is ready for screening under 28 U.S.C. § 1915A. However, since the type of relief Carter is seeking is not available under § 1983, the court is dismissing Carter's complaint without prejudice.

ALLEGATIONS OF FACT[1]

Johnson Carter currently resides in Wausau, Wisconsin, and at the time he filed his complaint, he was located at the Marathon County Jail in Wausau. He names four defendants, all of whom appear to be probation agents for the State of Wisconsin: Derek Durante, Connie Elbe, Candace Roberts and Catir Denfeld-Quiros.

[1] In addressing any *pro se* litigant's complaint, the court must read the allegations generously, resolving ambiguities and drawing all reasonable inferences in plaintiff's favor. *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

Carter alleges that all defendants were responsible for putting in place a no-contact order between him and Kellie McCoy, Carter's fiancé, on March 3, 2015, citing concerns that Carter and McCoy engaged in criminal conduct together and because of Carter's history of domestic abuse of McCoy. Although not explicit in his complaint, it appears Carter's probation was revoked in 2018 for his failure to comply with the no-contact rule. (*See* dkt. #1-4.) In particular, it appears that Carter's probation agents learned that Carter had contact with McCoy after his release from prison in November 2017, and thereafter recommended his revocation because Carter had previously been revoked due to his criminal activity with McCoy. (*Id.* at 2.)

Carter claims that defendants lied about both grounds for the no-contact order, and disavows committing any crimes with McCoy or ever being convicted of domestic abuse in circumstances in which McCoy was the victim. Although Carter admits that he was convicted of domestic abuse in 2003, McCoy was not a victim. *See State v. Carter*, No. 03CF770 (Marathon Cty), *available at* https://wcca.wicourts.gov (last visited July 7, 2020). Carter likewise challenges defendants' claim that he and McCoy were involved in criminal activity. According to Carter, Roberts cited an incident from November 20, 2015, as evidence that Carter and McCoy had engaged in criminal conduct together. Carter alleges that he had loaned his car to someone who fled the police. Carter admits that he was charged with fleeing, but alleges that the charge was dropped. Regardless, Carter claims that Roberts could not have cited to the November 2015 incident as evidence to support the March 2015 no-contact rule.

At the time he filed his complaint, Carter alleged that he was facing revocation because of the no-contact rule. Carter has not described the circumstances surrounding

his revocation, nor has he supplemented his complaint to provide details about his revocation proceedings. However, publicly available records show that Johnson was reincarcerated by the Wisconsin Department of Corrections from February 28, 2019, until May 21, 2019, at which point he was released on extended supervision. *See* https://appsdoc.wi.gov/lop/home.do (last visited July 9, 2020).

OPINION

Plaintiff claims that defendants violated his due process rights, since the no-contact rule prevented him from marrying his fiancé and resulted in his revocation. Plaintiff does not seek monetary damages; instead, he asks that the court take over his probation, for McCoy's probation to be transferred to another county, and for the court to stop his revocation proceedings.

However, Carter may not use this lawsuit to prevent or challenge his revocation proceeding or the terms of his probation; the only federal proceeding to obtain that form of relief is a petition for a writ of habeas corpus brought under 28 U.S.C. § 2254. *See Moran v. Sondalle*, 218 F.3d 647, 650-51 (7th Cir. 2000) ("State prisoners who want to challenge their convictions, their sentences, or administrative orders revoking good-time credits or equivalent sentence-shortening devices, must seek habeas corpus, because they contest the fact or duration of custody.") (citation omitted); *see also Drollinger v. Milligan*, 552 F.2d 1220, 1225 (7th Cir. 1977) (habeas corpus petition is the "appropriate remedy" for an individual raising a "constitutional challenge to the conditions and terms of probation"). Yet the Court of Appeals for the Seventh Circuit has held that "[w]hen a plaintiff files a § 1983 action that cannot be resolved without inquiring into the validity of

confinement, the court should dismiss the suit without prejudice," rather than convert it into a petition for habeas corpus. *Copus v. City of Edgerton*, 96 F.3d 1038, 1039 (7th Cir. 1996) (citing *Heck*, 512 U.S. 477). If Carter still wishes to challenge the terms of his custody, Carter is free to file a petition pursuant to § 2254. However, he should be aware that such a petition would have to be dismissed immediately unless he can show that he has presented his claims to the Wisconsin courts and has been denied relief at the trial and appellate levels, 28 U.S.C. § 2254(b)(1)(A), or that there is no state corrective process available to him, § 2254(b)(1)(B).[2] Accordingly, the court will dismiss Carter's claims in this lawsuit without prejudice.

ORDER

IT IS ORDERED that plaintiff Johnson Carter is DENIED leave to proceed, and this lawsuit is dismissed without prejudice.

Entered this 23rd day of November, 2021.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge

[2] Carter does not request monetary damages, but even if he did with respect to the revocation proceedings, such relief likely would be unavailable under *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Under *Heck,* a plaintiff is precluded from bringing claims for damages if judgment in his favor would "necessarily imply the invalidity of his conviction or sentence." 512 U.S. at 486-87. In other words, to the extent plaintiff is seeking damages premised on a wrongful conviction or sentence, he cannot proceed unless his conviction or sentence has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.* at 486-87; *see also Knowlin v. Thompson*, 207 F.3d 907, 909 (7th Cir. 2000) (requisite showing "would necessarily imply the invalidity of [plaintiff's] Wisconsin parole revocation, which *Heck* instructs cannot be shown through a § 1983 suit").