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

WAYNE D. MURPHY,

Plaintiff,

OPINION AND ORDER

v.

19-cv-783-wmc

SHAUN O'CONNELL, AMY BELL,
BILL LAZAR, and CHRISTOPHER NOLET,

Defendants.

Pro se plaintiff Wayne D. Murphy has filed this proposed action under 42 U.S.C. § 1983, alleging that certain conditions of his state parole were imposed and enforced in violation of his civil rights. Murphy requests leave to proceed without prepayment of fees or costs, and so the court must review the proposed complaint to determine if his allegations are (1) frivolous or malicious; (2) fail to state a claim upon which relief may be granted; or (3) seek money damages from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). However, since Murphy is seeking to proceed upon the same claims and allegations the court previously determined did not state a claim for relief, *see Murphy v. O'Connell*, No. 13-cv-72-wmc (W.D. Wis. June 13, 2013), the court is denying him leave to proceed and dismissing the complaint for the reasons that follow.

ALLEGATIONS OF FACT[1]

At the time he filed his complaint, Murphy was a resident of Wonewoc (Juneau County), Wisconsin. Similar to the 13-cv-72 case, he seeks to proceed against four state officials employed by the Wisconsin Department of Corrections in Madison, including his current parole agent (Shaun O'Connell), two former parole agents (Amy Bell, Christopher Nolet), and their supervising field officer (Bill Lazar).

In 1992, Murphy was charged in Dane County Case No. 92CF620, with two counts of first-degree sexual assault and one count of aggravated battery. Murphy was convicted of those charges upon his plea of "no contest." On March 25, 1993, the Dane County Circuit Court sentenced Murphy to 12 years of imprisonment. In 2001, Murphy was released from prison, and although he is not listed as currently being on active community supervision, Murphy indicates that he continues to be subject to the terms of his parole.

Like in his 2013 lawsuit, Murphy does not challenge the validity of his underlying conviction or his sentence here. Instead, he takes issue with certain conditions imposed upon his parole. In particular, Murphy alleges that defendant O'Connell ordered him to wear a GPS tracking device on November 30, 2011, after Murphy gave a "deceptive" response during a lie-detector test. After his release from jail on February 3, 2012, Murphy

[1] In addressing any *pro se* litigant's complaint, the court must read the allegations generously. *See Haines v. Kerner*, 404 U.S. 519, 521 (1972). The court accepts plaintiff's well-pleaded allegations as true and assumes the following probative facts Because Murphy's complaint takes issue with the terms of his state parole, the court has supplemented the facts with dates and procedural information about his underlying conviction from the electronic docket available at Wisconsin Circuit Court Access, http://wcca.wicourts.gov (last visited January 12, 2022).

remained subject to electronic monitoring with the added restriction of "home confinement" for up to 12 hours a day, and he alleges that he was prohibited from texting on his cell phone. Murphy contends that these conditions are excessive and constitute an "egregious abuse" of Department of Corrections' policy. Murphy, who is African American, further claims that the conditions imposed by O'Connell are discriminatory because "European Americans" are not treated in this manner.

Defendant Bell, who was Murphy's parole officer from 2008 through 2011, also reportedly revoked his supervised release in 2010, sending him to a secure detention facility for 56 days after he failed to report to the parole office on Halloween as required. Murphy claims that Bell also placed unreasonable restrictions on his ability to own a computer or to access the Internet and his ability to visit public libraries without permission. As a "self-published author," Murphy maintains that these restrictions interfered with his right to free speech, among other things. He further alleges that Bell has denied him access to the court, apparently because Murphy has not been scheduled for a probation hearing.

Murphy alleges further that defendant Nolet denied him access to the Internet in 2002, which caused "irreparable harm to [Murphy's] life, liberty and the career pursuits leading to his happiness." While Murphy was under Nolet's supervision in 2002, he was reportedly required to attend "group meetings" with other African American "clients." Murphy characterizes these as "Jim Crow groups" because there were no "white" clients in attendance. Murphy contends that Nolet is a racist because his "non-white clients" were punished for parole violations, whereas white clients were not.

Murphy claims that O'Connell, Bell and Nolet violated his rights under the First Amendment, the Eighth Amendment, and the Fourteenth Amendment Due Process Clause and the Equal Protection Clause. Murphy contends further that, as a supervisory parole officer, defendant Lazar approved of the wrongful actions taken by O'Connell, Bell and Nolet or failed to prevent the violation of his constitutional rights. Murphy seeks seeks compensatory and punitive damages for the restrictions on his access to the Internet or public libraries, as well as $1000 for each day that he was "falsely imprisoned" by a GPS tracking device.

OPINION

As an initial matter, in this lawsuit Murphy does not seek the same injunctive relief he requested in his prior lawsuit. Nor could he; as the court noted in the 13-cv-72 case, Murphy may not use 42 U.S.C. § 1983 to challenge the terms and conditions of supervised release of probation or parole. *Murphy*, No. 13-cv-72, dkt. #6, at 4 (citing *See Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005); *Savory v. Lyons*, 469 F.3d 667, 670-71 (7th Cir. 2006); *Williams v. Wisconsin*, 336 F.3d 576, 579-80 (7th Cir. 2003)); *see also Drollinger v. Milligan*, 552 F.2d 1220, 1224 (7th Cir. 1977) (reasoning that "terms and conditions" of probation or parole place a petitioner "in custody" for purposes of the federal habeas corpus statutes, meaning that such challenges are not appropriately raised in a § 1983 action).

Instead, in this lawsuit Murphy seeks monetary damages for the various restrictions he challenges. Yet his claims for monetary damages are subject to dismissal without

prejudice as well. Indeed, as the court *also* previously found, Murphy is prohibited from doing so, since success on the merits would necessarily imply the invalidity of conditions that resulted in his confinement. *Id.* (citing *Antonelli v. Foster*, 104 F.3d 899, 901 (7th Cir. 1997) (distinguishing claims related to confinement from other allegations of official misconduct)). To prevail in a civil rights action stemming from a prisoner's "unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid," the plaintiff must prove "that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determinations, or called into question by a federal court's issuance of a writ of habeas corpus [under] 28 U.S.C. § 2254." *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). A claim that bears a relationship to a conviction or sentence that has not been so invalidated is not cognizable under 42 U.S.C. § 1983. *Id.* In 2013, Murphy had not shown that that he had successfully challenged his parole conditions, nor does he allege in *this* lawsuit that he has done so since. Accordingly, the court must reach the same conclusion it did in 2013: Murphy's complaint must be dismissed in its entirety.

ORDER

IT IS ORDERED that:

1. The motion for leave to proceed *in forma pauperis* is DENIED, and the complaint filed by Wayne D. Murphy is DISMISSED without prejudice pursuant to *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

2. The clerk's office is directed to close this case.

Entered this 13th day of January, 2022.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge