IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

UNITED STATES OF AMERICA,

OPINION AND ORDER

Plaintiff,

92-cr-126-bbc

v.

DEWAYNE CROMPTON,

Defendant.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

In an order entered on November 18, 2010, I imposed a filing restriction on defendant, telling him that if he submitted additional frivolous documents challenging his 1993 conviction and sentence, they would be put into a file but not given any further consideration. Defendant has now filed a document entitled "Freedom of Information Act (U.S.C. 552) Privacy Act (5 U.S.C. 522a(d)(1)) Request."

Defendant's request is aimed at obtaining transcripts of the grand jury proceedings that resulted in his original indictment and a later superseding indictment. Defendant says that he wants to use the information in the transcripts in a suit against the then-United States Attorney, the Chief Probation Officer and the probation officer who prepared his presentence report. Such a suit would not be a direct attack on his conviction or sentence, so it is not covered by the November 18, 2010 order, but it cannot be considered for a host of other reasons. First, defendant has titled his pleading as a Freedom of Information Act

request, ostensibly filed under 5 U.S.C. § 552, but the judiciary is not subject to the Act. 5 U.S.C. § 551(1)(B). Second, the only way that a person can obtain grand jury transcripts is under Fed. R. Crim. P. 6(e), and then only upon a showing that the information "is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that [the] request is structured to cover only material so needed." Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 222 (1979). Defendant cannot meet these requirements because he has taken and completed the single collateral attack to which he is entitled. "

Third, this court has no jurisdiction to hear his request, even if it is recharacterized as a motion under Fed. R. Crim. P. 6(e), because Rule 6(e) is not a fount of jurisdiction. "Many decisions hold that there must be some other proceeding to obtain disclosure under Rule 6(e)(3)(E)." United States v. Campbell, 324 F.3d 497, 500 (7th Cir. 2003) (Easterbrook, J., concurring) (citing United States v. Baggot, 463 U.S. 476 (1983) McDonnell v. United States, 4 F.3d 1227, 1247–48 (3d Cir. 1993); American Friends Service Committee v. Webster, 720 F.2d 29, 71 (D.C. Cir.1983)).

Defendant has no civil suit pending. He may be contemplating one, but that is not enough to support his request, particularly when it is evident that the suit he is contemplating is wholly frivolous. He is trying to sue defendants who are immune from suit: one former and one current probation officer and a former United States Attorney.

The two probation officers share the judiciary's absolute immunity for actions taken in their judicial capacity. When probation officers prepare presentence reports for the court,

they are acting as arms of the court and cannot be sued. Tripati v. U.S.I.N.S. 784 F.2d 345, 348 (10th Cir. 1986); Hughes v. Chesser, 731 F.2d 1489, 1490 (11th Cir. 1984) (granting absolute 42 U.S.C. § 1983 immunity); Spaulding v. Nielsen, 599 F.2d 728, 729 (5th Cir. 1979) (granting absolute immunity to federal probation officers); Burkes v. Callion, 433 F.2d 318, 319 (9th Cir. 1970) (granting "similar, if not the same," 42 U.S.C. § 1983 immunity given judges). See also Copus v. City of Edgerton, 151 F.3d 646, 649-50 (7th Cir. 1998) (probation officer had absolute immunity for issuing detainer against defendant based on evidence seized by police).

The United States Attorney is immune for actions taken in the course of prosecuting a case. Imbler v. Pachtman, 424 U.S. 409, 420 & 431 (1976) ("a prosecutor enjoys absolute immunity from § 1983 suits for damages when he acts within the scope of his prosecutorial duties"; that is, when he initiates prosecution and presents government's case). See also Buckley v. Fitzsimmons, 509 U.S. 259, 270 (1993) (holding that prosecutor not entitled to absolute immunity for investigatory actions, but confirming that absolute immunity applied to prosecutorial duties). Defendant makes it clear that he wants to sue former United States Attorney Van Hollen for his actions in prosecuting defendant; the law prevents him from doing so.

Accordingly, defendant has not shown that this court has jurisdiction to hear his request, even if it is construed as a motion brought under Fed. R. Crim. P. 6(e). Therefore, the request must be DENIED.

ORDER

IT IS ORDERED that defendant DeWayne Crompton's filing, entitled "Freedom of Information Act (U.S.C. 552) Privacy Act (5 U.S.C. 522a(d)(1)) Request" is DENIED for lack of jurisdiction.

Entered this 9th day of July, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge