

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

STEPHEN JOHNSON

Petitioner,

v.

JERRY E. SMITH JR. and
JEANNE HUIBREGTSE, in
their individual capacities,

Respondents.

ORDER

02-C-0167-C

This is a civil action for monetary relief brought pursuant to 42 U.S.C. § 1983. Petitioner Stephen Johnson requests leave to proceed in forma pauperis, alleging that respondents refused to give him a “mandatory” parole interview in violation of due process and Wis. Stat. § 304.01.

Petitioner receives no monthly income or assets and is unemployed. Under this court’s standard, petitioner is indigent may proceed without any prepayment of fees and costs.

In addressing any pro se litigant’s complaint, the court must construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, the complaint must

be dismissed if, even under a liberal construction, it is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a respondent who is immune from such relief. See 42 U.S.C. § 1915e.

Because petitioner fails to state a claim upon which relief can be granted, I will deny his request for leave to proceed in forma pauperis and decline to exercise supplemental jurisdiction over his state law claims.

In his complaint and attachments, petitioner makes the following material allegations of fact.

ALLEGATIONS OF FACT

Petitioner resides in Milwaukee, Wisconsin. At all relevant times, petitioner was an inmate at the Kettle Moraine Correctional Institution in Plymouth, Wisconsin. Respondent Jeanne Huibregtse is a parole interviewer and respondent Jerry E. Smith is her supervisor.

On October 4, 1999, petitioner filed a written request with his social worker asking for a parole interview. The social worker gave petitioner a “notice of parole interview” indicating that an interview would be held on December 16, 1999, pursuant to Wis. Stat. § 304.01(2).

On December 16, 1999, respondent Huibregtse arrived at the Kettle Moraine Correctional Institution and conducted parole interviews with other inmates. Respondent

Huibregtse refused to conduct a “mandatory” parole interview as required under Wis. Stat. § 304.01. Respondent Huibregtse issued a decision in which she stated that she reviewed petitioner’s file, but she did not review his file. Respondents know that they cannot make a discretionary parole review on the basis of a file review.

Petitioner wrote respondent Smith asking for his parole interview. Respondent Smith refused to conduct a parole interview.

On January 11, 2000, petitioner received a response from the Wisconsin Parole Commission that stated, “there are no appeals of parole decisions to the chairman.”

After December 16, 1999, respondent Huibregtse returned to Kettle Moraine over ten times and refused to give petitioner a parole interview.

Inmate Terry R. Townson, #226288, who was convicted of a brutal murder was given a parole interview.

Respondents gave petitioner a “12-month defer” in a previous parole hearing. This decision does not “trump” petitioner’s right to a parole interview.

Petitioner is suing respondents “because of the process used on him, not for the decision to deny [him] parole.”

DISCUSSION

A. Due Process Claim

I understand petitioner to allege that respondents failed to provide him with a parole hearing in violation of his right to due process under the Fourteenth Amendment. Establishing that government officials have violated due process requires proof of inadequate procedures and interference with a liberty or property interest. See Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989); Averhart v. Tutsie, 618 F.2d 479, 480 (7th Cir. 1980). There is no independent constitutional right to parole, see Heidelberg v. Illinois Prisoner Review Board, 163 F.3d 1025, 1026 (7th Cir. 1998), and Wisconsin has not created such a right through its general parole statute, Wis. Stat § 304.06. Although petitioner asserts that his parole interview was “mandatory” under Wis. Stat § 304.01, this is incorrect. In Wisconsin, parole is discretionary, not mandatory. See Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1 (1979) (whether state creates protected liberty interest in parole depends on whether parole is discretionary or mandatory under state law); State v. Borrell, 167 Wis. 2d 749, 772, 482 N.W.2d 883, 891 (1992) (“The possibility of parole does not create a claim of entitlement nor a liberty interest.”). Because petitioner’s parole was discretionary and he has no liberty interest in discretionary parole, he has failed to state a claim upon which relief may be granted under the due process clause of the Fourteenth Amendment.

B. State Law Claims

Because I will deny leave to proceed on petitioner's due process claim, I decline to exercise supplemental jurisdiction over his state law claims of violation of Wis. Stat. § 304.01.

ORDER

IT IS ORDERED that

1. Petitioner Stephen Johnson's request for leave to proceed in forma pauperis is DENIED for failure to state a claim upon which relief can be granted;
 2. I decline to exercise supplemental jurisdiction over petitioner's state law claims;
- and
3. The clerk of court is directed to close this file.

Entered this 4th day of April, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge