IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RONALD WOLFE, JR.,

ORDER

Petitioner,

03-C-302-C

v.

JON E. LITSCHER, Department of Corrections; JOHN BETT, Warden, Dodge Correctional Institution; GARY McCAUGHTRY, Warden, Waupun Correctional Institution; SUE WALLINTIN, Business Manager, Waupun Correctional Institution,

Respondents.

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This is a proposed civil action for monetary, declaratory and injunctive relief, brought under 42 U.S.C. § 1983. Petitioner, who is presently confined at the Waupun Correctional Institution in Waupun, Wisconsin, asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the fees and costs of starting this lawsuit and has no assets or means with which to pay the initial partial filing fee required by 28 U.S.C. § 1915(b)(1). Accordingly, I will review petitioner's request for leave to proceed in forma

pauperis without first requiring payment of an initial partial filing fee. 28 U.S.C. § 1915(b)(4).

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. See Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint 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.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner Ronald Wolfe, Jr., is a Wisconsin inmate presently confined at the Waupun Correctional Institution in Waupun, Wisconsin. Respondent Jon E. Litscher is the former secretary of the Wisconsin Department of Corrections. Respondent Gary McCaughtry is the warden of the Waupun Correctional Institution, where respondent Sue Wallintin is the business manager. Respondent John Bett is the warden of the Dodge Correctional Institution in Waupun, Wisconsin.

In September 1995, while petitioner was confined at the Racine Correctional Institution, he received a conduct report which included a requirement that he pay restitution. Petitioner was afforded no hearing concerning the amount of restitution he was ordered to pay or the value of the property involved in the incident. The amount of the restitution ordered was approximately $1,000 and 75 percent of petitioner's prison wages were taken to satisfy his obligation. As a result of the restitution order, petitioner applied for and received general loans and legal loans from the Racine, Waupun and Oshkosh correctional institutions in accordance with Wisconsin's administrative code. As a result of his loans and restitution, petitioner was not permitted to receive "moderate" wages.

Petitioner's mandatory release date was December 8, 1998. While petitioner was on parole, he was not required to make any restitution payments to the Department of Corrections. On April 19, 1999, petitioner was discharged from his 1995 sentence and parole supervision. In December 2000, petitioner was convicted of a new crime and received a new sentence. On December 14, 2000, petitioner was readmitted to the Department of Corrections and confined at the Dodge Correctional Institution. On December 29, 2000, petitioner received a copy of his prison trust account statement informing him that the Department of Corrections and the Dodge prison were seizing his trust account funds to pay for restitution and general and legal loan debts from his previous incarceration, even though the department had not obtained a civil judgment for these amounts. The amount of

petitioner's alleged debt is $1,253. On January 12, 2001, respondent Bett rejected petitioner's inmate complaint and denied him regular prison wages and the right to keep all money he received from family and friends. On March 10, 2001, respondent Litscher affirmed the dismissal of petitioner's appeal.

On February 1, 2001, petitioner was transferred to Waupun Correctional Institution. In April 2001, petitioner sent a letter to respondent Wallintin questioning his alleged debts and complaining about the seizure of 100% of the funds he received or earned at the Waupun prison. Respondent Wallintin wrote back, stating that "any debts from previous incarcerations that have not been paid at the time the inmate is re-incarcerated still remain due . . . . The repayment percentage for these debts are not mandated by any statute or rule. The repayment amounts are set at the discretion of the institution." Respondent Wallintin proceeded to take 100% of the money petitioner earned or received.

On or about January 2, 2003, petitioner wrote respondent Wallintin again complaining about the withholding of his prison funds. Respondent Wallintin wrote petitioner a letter stating that his complaint had already been addressed and that if he still had concerns regarding his restitution order he should write the business manager at the Racine Correctional Institution or file an inmate complaint. On January 7, 2003, petitioner submitted an inmate complaint, alleging that the Department of Corrections and the Waupun prison could not legally take his money following his April 1999 discharge from his

previous sentence. Petitioner filed addendums to his complaint on January 29, 2003. On February 11, 2003, petitioner's complaint was rejected by a complaint examiner, allegedly because it was untimely. Respondent McCaughtry affirmed the rejection of petitioner's complaint on March 4, 2003, despite the fact that petitioner had informed McCaughtry that his money was being taken without due process because he had been discharged from his previous conviction and the Department of Corrections had never obtained a civil judgment against him for his alleged debts.

OPINION

I understand petitioner to allege that defendants are depriving him of his right to due process by garnishing his prison wages and seizing monetary gifts he receives from his family and friends in order to pay off loans and an institutional restitution order stemming from a disciplinary infraction. In particular, petitioner objects to the fact that he is currently being forced to pay debts he incurred while incarcerated on a previous sentence, even though that sentence has expired.

The Fourteenth Amendment prohibits a state from depriving "any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Before petitioner is entitled to Fourteenth Amendment due process protections, he must first have a protected liberty or property interest at stake. Averhartv. Tutsie, 618 F.2d 479, 480 (7th Cir. 1980).

Inmates have a property interest in the funds on deposit in their prison accounts, see Campbell v. Miller, 787 F.2d 217, 222 (7th Cir. 1986), including money sent to them from sources outside the prison such as friends and family. See Mahers v. Halford, 76 F.3d 951, 954 (8th Cir. 1996). However, to the extent petitioner complains about the garnishment of his prison wages, he must also demonstrate that he has a protected property interest in receiving those wages. The Constitution does not provide petitioner such an interest; states may requires prisoners to work and have complete discretion over any compensation for such work. Vanskike v. Peters, 974 F.2d 806, 809 (7th Cir. 1992). Therefore, petitioner would have to point to a state statute entitling him to the prison wages used to satisfy the restitution order. Id.; Campbell, 787 F.2d at 222 ("For purposes of the Due Process Clause, property interests must be found in state or federal law.").

Assuming petitioner can establish that he has a property interest in the funds being withheld or deducted from his inmate account to satisfy his restitution obligation, he must also demonstrate that the imposition of the restitution order was not accompanied by sufficient procedural protections. Although petitioner argues otherwise, it is of no consequence that he committed the institutional infraction for which he owes restitution while he was serving an earlier sentence that he has now completed. Similarly, the due process clause does not require respondents to obtain a civil judgment to collect restitution for a disciplinary infraction, as petitioner contends. As the Court of Appeals for the Seventh

Circuit has noted, "[i]t is truly too much to require correctional officials to seek a criminal restitution order or a civil tort judgment before they may restrict an inmate's use of his commissary account until he makes good the damage he has caused to prison property." Campbell, 787 F.2d at 224. Rather, state corrections officials can freeze or debit an inmate's account to enforce restitution orders issued by prison disciplinary bodies, provided that the disciplinary proceedings conform to the minimum requirements of procedural due process set forth in Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In his correspondence to corrections officials regarding his inmate complaint, petitioner concedes that he received a disciplinary hearing on the charge that led to the restitution order. Although at least one court has held that in addition to the Wolff requirements, the Constitution requires prison officials to hold a separate hearing to determine the precise *amount* of restitution an inmate owes, see Artway v. Scheidemantel, 671 F. Supp. 330, 336-38 (D.N.J. 1987), the court of appeals' opinion in Campbell does not suggest the need for an additional hearing.

Even if petitioner could overcome all these hurdles, however, he would still lose because he has already sought review in state court of the disciplinary hearing from which his restitution obligation stems, a fact petitioner neglects to mention in his complaint. In State ex. rel Wolfe v. Morgan, No. 96-3261, 1997 WL 280270 (Wis. Ct. App. May 29, 1997) (unpublished order), the Wisconsin Court of Appeals held that petitioner had received all the process he was due under Wolff during his disciplinary hearing. In its

opinion, the court noted that restitution was a component of petitioner's punishment. Although the court did not discuss the precise amount of restitution petitioner was assessed, it held that there was sufficient evidence to support the disciplinary committee's decision. Id. at *5. Petitioner cannot now raise in this court the same challenge to his restitution obligation that he raised, or should have raised, in state court. See Gleash v. Yuswak, 308 F.3d 758, 760 (7th Cir. 2002); Okoro v. Bohman, 164 F.3d 1059, 1062 (7th Cir. 1999) (under doctrine of res judicata, or claim preclusion, "a subsequent suit is barred if the claim on which it is based arises from the same incident, events, transaction, circumstances, or other factual nebula as a prior suit that ha[s] gone to final judgment"). Accordingly, petitioner will be denied leave to proceed on his due process claim, which will be dismissed as legally frivolous. To the extent petitioner alleges that his restitution order violates state law, I decline to exercise supplemental jurisdiction over his state law claims pursuant to 28 U.S.C. § 1367(a). See 28 U.S.C. § 1367(c)(3).

ORDER

IT IS ORDERED that

1. Petitioner Ronald Wolfe Jr.'s request for leave to proceed in forma pauperis on his Fourteenth Amendment due process claim is DENIED and his case is DISMISSED with prejudice as legally frivolous;

2. The unpaid balance of petitioner's filing fee is $150.00. This amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2).

3. A strike will be recorded against petitioner in accordance with 28 U.S.C. § 1915(g).

4. The clerk of court is directed to close this case.

Entered this 7th day of July, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge