

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

EDDIE G. EVANS,

Petitioner,

ORDER

v.

03-C-326-C

WISCONSIN STATE DEPARTMENT OF
PROBATION AND PAROLE; LOUISIANA
STATE DEPARTMENT OF PROBATION
AND PAROLE; and LOUISIANA DEPARTMENT
OF CORRECTIONS,

Respondents.

This is a proposed civil action for monetary relief, brought pursuant to 42 U.S.C. § 1983. Petitioner Eddie Evans, who is an inmate at the Dane County jail in Madison, Wisconsin, requests leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. He contends that respondents acted illegally when they placed him on parole after releasing him from prison. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the fees and costs of instituting this lawsuit. Petitioner has submitted the initial partial payment required under § 1915(b)(1).

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, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if, on three or more previous occasions, the prisoner has had a suit 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 seeks money damages from a defendant who is immune from such relief.

Petitioner argues that under the Louisiana statutes, he was not eligible for parole. Therefore, he contends, when he was placed on parole after his release from prison, respondents violated the law. He asks that this court "find the Louisiana and Wisconsin parole supervision over him invalid and impose reasonable monetary actual punitive damages for each day that the petitioner illegally and improperly served on parole."

Because petitioner should have brought his claim as a petition for habeas corpus instead of an action under 42 U.S.C. § 1983, I must dismiss this action. In Heck v. Humphrey, 512 U.S. 477 (1994), the Supreme Court held that when an inmate is challenging the fact or duration of his confinement, his sole remedy is a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Perhaps petitioner believes that because he is challenging his placement on parole rather than the time he served in prison, this rule does not apply to him. Although such a belief would be understandable, it is not consistent with the law. The court of appeals has held that "confinement" includes parole, so that a

challenge to parole must be brought as a petition for a writ of habeas corpus. Williams v. State of Wisconsin, No. 02-4233, slip op., at 3-4 (July 15, 2003) (citing Jones v. Cunningham, 371 U.S. 236 (1963); Maleng v. Cook, 490 U.S. 488 (1989)).

To the extent that petitioner is asking that the court convert his civil action into an action for a writ of habeas corpus, that motion will be denied as well. District courts are “not authorized to convert a § 1983 action into a § 2254 action.” Copus v. City of Edgerton, 96 F.3d 1038, 1039 (7th Cir. 1996). Rather, “[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.” Id. Petitioner may then exhaust his remedies in state court or, if he has already done so, he may file a *new* action *against his custodian*, petitioning for a writ of habeas corpus under § 2254.

Because I am dismissing petitioner’s claim as being brought under the wrong statute, I do not consider the merits of his claim. However, I note that petitioner’s primary contention is that his parole status is invalid because *Louisiana* law prohibits it. To obtain habeas relief in federal court, petitioner must show that his sentence was extended in violation of *federal* law. Hamlin v. Vaudenberg, 95 F.3d 580, 583 (7th Cir. 1996). To the extent petitioner believes that his sentence violates state law, it is in state court that petitioner

should seek a remedy.

ORDER

IT IS ORDERED that petitioner Eddie Evans' request for leave to proceed is DENIED and this case is DISMISSED. Because I have not considered the merits of petitioner's claim, I will not record a strike under 28 U.S.C. § 1915(g). The unpaid balance of petitioner's filing fee is \$131.57; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2).

Entered this 22nd day of July, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge