

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

BRENDA C. ARMSTEAD,

Petitioner,

v.

CHARLENE H. SORRENTINO,
ANNA GARDNER, DALE ROSS,
K. MICHAEL MOORE, JOAN A.
LENARD,

Respondents.

ORDER

03-C-51-C

Petitioner Brenda Armstead has requested leave to proceed in forma pauperis in this civil action for injunctive relief, pursuant to 28 U.S.C. § 1915. 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. In addressing any pro se litigant's complaint, the court must construe the complaint liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972). However, the court may not grant leave to proceed if the action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. §

1915(e)(2).

In petitioner's proposed complaint, she alleges that Nicole Donelli has been imprisoned illegally in Broward County, Florida. She writes: "I seek her immediate release or so help me God I will the seek the prosecution - Jail - Removal from the bench of every Judge in this court." She brings her complaint pursuant to 42 U.S.C. § 1983.

Petitioner's complaint is fatally flawed in at least two respects. First, although petitioner's complaint does not specify why Donelli's imprisonment is unlawful, it is clear that petitioner seeks Donelli's release. A suit under § 1983 cannot provide petitioner with the relief she requests. Rather, 28 U.S.C. § 2254 (the habeas corpus statute) provides the sole remedy for challenging the validity of a conviction. Heck v. Humphrey, 512 U.S. 477 (1994). Further, 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. A petitioner may then exhaust her remedies in state court or, if she has already done so, she may file a *new* action *against her custodian*.

In addition, there are only a limited number of circumstances in which a third party may file a petition under 28 U.S.C. § 2242 on behalf of a person in custody. At a minimum, petitioner would have to allege facts demonstrating that Donelli lacked the capacity to file

her own petition. Wilson v. Lane, 870 F.2d 1250, 1253 (7th Cir. 1989). If a petitioner fails to do this, the court is without jurisdiction to consider the petition. Id.

Finally, I note that petitioner alleges that Donelli is incarcerated in Florida. In habeas corpus actions, the only district courts that have jurisdiction to hear such a petition are those in the state in which the custodian may be found. 28 U.S.C. § 2241(a); Braden v. 30th Judicial Circuit Court, 410 U.S. 484, 494-96 (1973); Hanahan v. Luther, 760 F.2d 148, 151 (7th Cir. 1985). If petitioner wishes to file a habeas corpus petition for Donelli and can show that she has satisfied the requirements for filing as a third party, she should file the petition in Florida.

This is the third action that petitioner has filed in this court in a month. The previous actions, like this one, were frivolous. As I noted in case no. 02-C-688-C, petitioner was sanctioned by the Supreme Court of Florida for filing more than 20 frivolous petitions. Petitioner states in her complaint that she has “pending causes” against “50+” public officials “across the country.”

I remind petitioner again that the resources of the judiciary are limited; the ability of courts to perform their essential functions is hindered when they are required to devote their time and energy to cases in which no true controversy exists. Squandering the courts’ resources affects parties with meritorious claims who rely on the judiciary to adjudicate their claims efficiently and fairly. I strongly encourage petitioner to consider alternative methods

of resolving her disputes with others. Courts were never intended to provide a remedy for every wrong that an individual perceives; most disputes cannot be resolved through litigation. Petitioner's success rate in this court and in Florida should demonstrate this. Before filing more actions in this court or any other, petitioner should consider whether she could direct her energies in a manner more likely to provide her with the fulfillment she seeks.

ORDER

IT IS ORDERED that petitioner Brenda Armstead's request for leave to proceed in forma pauperis is DENIED and this case is DISMISSED.

Entered this 7th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge