

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

TYLON C. CHRISTIAN,

Petitioner,

v.

DOUGLAS TIMMERMAN, KATHERINE
DAYTON, NEIL LANE, DENISE SYMDON,
MARCIA GOODWIN, and CAROLE BRIONES,

Respondents.

ORDER

03-C-688-C

In an order entered on December 31, 2003, I denied petitioner's request for leave to proceed in forma pauperis in this proposed civil action brought under 42 U.S.C. § 1983 and dismissed the case for failure to state a claim upon which relief may be granted. The dismissal was based on my conclusion that petitioner could not raise in a § 1983 action a claim that he was illegally incarcerated for a period of time in 2001 and 2002 because he had failed to show that the custody he challenges "has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Heck v. Humphrey, 512 U.S. 477, 487 (1994). Now petitioner has filed a

document titled “Amended Complaint and Motion to Reconsider,” which I construe as motion pursuant to Fed. R. Civ. P. 59 to alter or amend the judgment of dismissal.

In his motion, petitioner argues that I erred in applying Heck to his case. He appears to be saying that the legal question he presents in his complaint will not imply the invalidity of his incarceration if this court were to find in his favor.

It is true that Heck left open the possibility that a § 1983 suit could be brought to challenge allegedly unconstitutional actions that led to extended confinement if the confinement might have followed even if the unconstitutional actions had not occurred. In his Rule 59 motion, petitioner makes the conclusory assertion that his parole “was extended without due process hearing,” but his factual allegations do not support this assertion. The attachments to petitioner’s complaint show that he was given notice of a final revocation hearing to be held on June 4, 2002 at 9:30 a.m., and that a lawyer was appointed to represent him at his hearing. The attachments show also that on June 3, 2002, petitioner signed a “Combined Waiver of Final Revocation and Waiver of Good Time Forfeiture/Reincarceration Hearings.” Therefore, petitioner cannot argue that he was denied procedural due process in conjunction with his parole revocation.

A second claim petitioner appears to be attempting to reiterate in his Rule 59 motion is that his parole agent and the parole commission lacked the authority to revoke his parole because his time for serving parole had expired before he was taken into custody. This

allegation most closely resembles a false imprisonment claim. However, there is no cause of action under the Fourteenth Amendment for denial of due process for wrongful imprisonment when there are adequate state remedies for false arrest, false imprisonment, and malicious prosecution. Hood v. City of Chicago, 927 F.2d 312, 314 (7th Cir. 1991) (citing Guenther v. Holmgreen, 738 F.2d 879 (7th Cir. 1984)). Petitioner does not allege that he has no state remedies.

To the extent that petitioner is seeking confirmation in this lawsuit that the parole commission was in fact without legal authority to revoke his parole, it is precisely the kind of case that Heck bars. There can be no determination by this court that the parole commission was without authority to revoke petitioner's parole without disturbing the validity of petitioner's incarceration.

ORDER

IT IS ORDERED that:

1. Petitioner Tylon C. Christian's motion brought pursuant to Fed. R. Civ. P. 59 to

alter or amend the judgment of dismissal in this case is DENIED.

Entered this 26th day of January, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge