

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

CHARLES RYAN,

Petitioner,

v.

JOSEPH SCIBANA,

Respondent.

ORDER

04-C-364-C

This is a proposed civil action for mandamus brought pursuant to 28 U.S.C. § 1361. Petitioner, who is presently confined at the Federal Correctional Institution in Oxford, Wisconsin, seeks an order compelling respondent Joseph Scibana, warden of the Oxford facility, to invalidate a warrant issued by the Johnson County Sheriff's Office in Cleburne, Texas. Petitioner 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 full fees and costs of starting this lawsuit. Petitioner has paid the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. 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), and to dismiss the action 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.

Because petitioner's allegations of fact do not support a finding that a writ of mandamus against respondent would be appropriate, I will dismiss this case for petitioner's failure to state a claim upon which relief may be granted.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner Charles Ryan is an inmate currently incarcerated at the Oxford Federal Correctional Institution in Oxford, Wisconsin. Respondent Joseph Scibana is the warden of the Oxford facility.

On July 15, 2003, a detainer was lodged in favor of the Johnson County Sheriff's Office in Cleburne, Texas, charging petitioner with driving while intoxicated. On July 16, 2003, petitioner requested staff at the Oxford facility to initiate procedures for the disposition of the detainer under the Interstate Agreement on Detainers Act. On March 17,

2004, the Johnson County Sheriff's office contacted staff at the Oxford facility, advising them that the detainer had been removed but that the warrant would remain active locally.

Petitioner is participating in a nine-month drug and alcohol abuse program for residents of the Oxford facility. Ordinarily, participants spend the last six months of the program in a half-way house that provides rehabilitative services. Initially, petitioner was scheduled to be released to a half-way house in Dallas, Texas on June 4, 2004. However, staff at the Oxford facility later informed him that he would not be sent because of the outstanding warrant. On May 14, 2004, petitioner wrote to respondent, requesting that he dispose of the outstanding charge. On May 23, 2004, respondent answered petitioner's letter, informing him that the Bureau of Prison's Program Statement 5800.13 states that "[i]f an inmate says that his or her rights have been violated under the IADA, the inmate will be advised to contact the state authorities or his or her attorney. The Bureau does not decide the validity of the detainer or violation of any IADA provision."

OPINION

Petitioner brings his action under 28 U.S.C. § 1361, which provides district courts with jurisdiction to issue a writ of "mandamus to compel a federal officer or agency to perform a duty owed to the plaintiff." Mandamus is available only where a petitioner has a clear right to the relief sought, where respondent has a nondiscretionary, ministerial duty

to do the act in question and where petitioner can show that there is no other adequate remedy. Burnett v. Bowen, 830 F.2d 731, 739 (7th Cir. 1987); Panko v. Rodak, 606 F.2d 168, 169 (7th Cir. 1978); Holmes v. United States Board of Parole, 541 F.2d 1243, 1247 n.5 (7th Cir. 1976), overruled on other grounds by Solomon v. Benson, 563 F.2d 339 (1977). Mandamus is an extraordinary remedy that is available when the statute defining that duty is “clear and free from doubt.” Banks v. Secretary of the Indiana Family and Social Services Administration, 997 F.2d 231, 244 (7th Cir. 1993) (additional citations omitted).

Petitioner asserts that respondent has a duty to see to it that the Johnson County sheriff’s office in Cleburne, Texas invalidates its outstanding “locally active” warrant for petitioner. He argues that this duty arises under Article IX, § 5 of the Interstate Agreement on Detainers Act, which provides that “[a]ll courts, departments, agencies, officers and employees of the United States . . . are hereby directed to enforce the agreement on detainers and to cooperate with one another and with all party states in enforcing the agreement and effectuating its purpose.” 18 U.S.C. App. § 2.

“The Interstate Agreement on Detainers Act (IAD) is a compact among 48 States, the District of Columbia, and the Federal Government [that] enables a participating State to gain custody of a prisoner incarcerated in another jurisdiction, in order to try him on criminal charges.” Reed v. Farley, 512 U.S. 339, 341 (1994). Under the act, an inmate incarcerated in a penal or correctional institution of a member state may request final

disposition of any indictment, information, or complaint for which a detainer has been lodged against him by other member states. 18 U.S.C. App. § 2, art. III(a). An inmate must provide written notice of his request to the warden, commissioner of corrections or official with custody over him. 18 U.S.C. App. § 2, art. III(b). Upon receipt, the warden is to forward the request together with an official certificate indicating “the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time credit earned, the time of parole eligibility of the prisoner, and any decision of the States parole agency relating to the prisoner” to the prosecuting officer and the appropriate court of the prosecuting officer’s jurisdiction. Id.

The inmate must be brought to trial within one-hundred and eighty days after the prosecuting officer and appropriate court are notified of his request for final disposition. 18 U.S.C. App. § 2, art. III(a). The act provides that if trial is not had on any within this time, the indictment, information or complaint on which the detainer was based shall have no force or effect and that a court must enter an order dismissing the charges with prejudice. 18 U.S.C. App. § 2, art. III(e).

The act does create certain clear, nondiscretionary, ministerial duties on the part of an inmate’s custodial official, who is in this case respondent. These duties are to notify appropriate authorities of the inmate’s request for final disposition, create a certificate providing certain information about the duration of the inmate’s term of imprisonment and

inform the inmate of the source and content of any detainer lodged against him and his right to seek final disposition on the indictment, information or complaint underlying the detainer. 18 U.S.C. App. § 2, art. III. Petitioner does not argue that respondent has failed to perform any of these specified duties. Indeed, he concedes that the detainer has been removed. Instead, he argues that respondent had a duty to invalidate a locally active warrant issued by another jurisdiction. The act does not create any such obligation. In fact, respondent has no legal authority to question the validity of a warrant issued by another jurisdiction. The provision to which petitioner refers requiring officers and employees of the United States to “enforce” the agreement does not create any duty that ministerial in nature or “clear and free from doubt” in its scope; accordingly, it cannot be enforced in a mandamus action. Because petitioner has failed to allege facts suggesting that he is entitled to relief under the mandamus statute, his petition will be dismissed.

ORDER

IT IS ORDERED that

1. Petitioner Charles Ryan’s petition for leave to proceed under the mandamus statute, 28 U.S.C. § 1361, is DENIED and this case is DISMISSED with prejudice for petitioner's failure to state claim upon which relief may be granted;
2. The unpaid balance of petitioner's filing fee is \$147.07; 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 pursuant to § 1915(g); and

4. The clerk of court is directed to close the file.

Entered this 18th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge