IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DANIEL R. WILLIAMS,

Petitioner,

v.

STATE OF WISCONSIN;
HELENE NELSON, Secretary of the
Wisconsin Department of Health and
Family Services; and STEVE WATTERS,
Director of the Sand Ridge Secure
Treatment Center,

Respondents.

ORDER

05-C-569-C

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This is a proposed civil action for declaratory and injunctive relief, brought under 42 U.S.C. § 1983. Petitioner Daniel R. Williams is presently detained by the State of Wisconsin at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin, as a patient pursuant to Wisconsin's Sexually Violent Persons Law, Wis. Stat. ch. 980. He seeks 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. Because he is a patient and not a prisoner, petitioner

is not subject to the 1996 Prison Litigation Reform Act.

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, pursuant to 28 U.S.C. § 1915(e)(2), if a litigant is requesting leave to proceed in forma pauperis, the court must deny leave to proceed if the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a defendant who is immune from such relief.

In his complaint, petitioner alleges the following facts.

ALLEGATIONS OF FACT

Petitioner Daniel Williams is an involuntarily committed mental health patient in the custody of the Wisconsin Department of Health and Family Services. He is currently detained at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin pursuant to Wis. Stat. ch. 980. Respondent State of Wisconsin has authority over the Department of Health and Family Services. Respondent Helene Nelson is Secretary of the Department of Health and Family Services. Respondent Steve Watters is Director of the Sand Ridge Secure Treatment Center.

Petitioner has been diagnosed with a severe mental illness. He must take a high dosage of medication to reduce his propensity to engage in aggressive verbal and behavioral

outbursts. Petitioner is not receiving treatment necessary to reduce his symptoms. At times, he has acted aggressively while at Sand Ridge, requiring an immediate order for medication.

Petitioner is from Racine County and the Circuit Court for Racine County retains jurisdiction over petitioner's civil commitment. On numerous occasions, petitioner has been transported by the Racine County sheriff under writs of habeas corpus ad prosequendum to the county jail so that he can attend proceedings in the circuit court related to his commitment. Before he is transported to the county jail, petitioner is strip searched, dressed in "prison greens" by security staff at Sand Ridge and placed in handcuffs, a black box, waist chain and leg irons. During the three-hour drive, petitioner sits on a metal seat inside a metal box inside the Racine County sheriff's van. Petitioner has been held at the jail for days before being returned to Sand Ridge. At the jail, petitioner is placed in the general population with prison inmates and detainees and is not considered a patient. The jail has a section for mental health inmates and these inmates are subject to the delivery of services by the sheriff's department deputies, who distribute medication to the inmates. Certain medications are not allowed in the jail.

In Volden v. Koenig, 2001 WI App 290, 249 Wis. 2d 284, 638 N.W.2d 906 (2001), the Court of Appeals of Wisconsin held that ch. 980 patients are not considered patients for the purpose of Wisconsin's patient's rights statute, Wis. Stat. § 51.61, while they are outside a mental health center pursuant to a writ. The Wisconsin Supreme Court declined to review

the court of appeals' decision in Volden. Respondents Watters and Nelson never provided notice that patients transported outside a mental health institution lose the rights conferred by Wis. Stat. § 51.61. The Wisconsin legislature has not enacted a law depriving ch. 980 patients of the protections of Wis. Stat. § 51.61 while they are transported and it has not provided notice concerning a change in the rights of patients in its custody.

DISCUSSION

A. Duplicative Claims

Petitioner alleges that he is receiving insufficient treatment for his mental illness at the Sand Ridge Secure Treatment Center and that before he is transported from Sand Ridge to the Racine County jail, he is strip searched, dressed in standard prison clothing and placed in leg irons, a waist chain, handcuffs and a black box. Petitioner raised these allegations in another case pending in this court, Williams v. Nelson et al., 04-C-774-C. In that case, I granted petitioner leave to proceed on his claim of inadequate mental health treatment and denied him leave to proceed on his claim concerning the conditions of his transportation. Accordingly, I will deny petitioner leave to proceed on his claims of inadequate mental health treatment and unconstitutional restraint because they are duplicative.

B. Treatment at Racine County Jail

I understand petitioner to allege broadly that his due process rights are violated because he is treated like a prisoner when detained at the Racine County jail. Specifically, petitioner alleges that he is placed in the jail's general population with prison inmates and detainees and that he is not accorded the same rights at the jail as he is at Sand Ridge. Petitioner alleges also that respondents Nelson and Watters did not notify him in advance that he would lose the rights and privileges granted by Wis. Stat. § 51.61 when he is transported to the jail.

To state a due process claim, petitioner must allege that the state has infringed on a protected liberty or property interest without proper process. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). In this case, petitioner's allegations do not give rise to a protected liberty interest. The due process clause does not prohibit state officials from detaining civil committees or pretrial detainees temporarily with persons who have been convicted of crimes. Allison v. Snyder, 332 F.3d 1076, 1078 (7th Cir. 2003) (complaint alleging that persons under civil commitment were housed in institution that also housed prison inmates and that civil committees mingled with inmates on occasion failed to state claim). This temporary placement is necessary so that petitioner may attend court proceedings concerning his civil commitment. Petitioner's allegation that the rights and privileges he enjoys at Sand Ridge are restricted when he is detained at the jail does not implicate a liberty interest. In Thielman v. Leean, 282 F.3d 478 (7th Cir. 2002), the Court

of Appeals for the Seventh Circuit held that a ch. 980 patient did not have a liberty interest in being transported without handcuffs and leg restraints. The court stated that a ch. 980 patient must "identify a right to be free from restraint that imposes atypical and significant hardship in relation to the ordinary incidents of his confinement" to state a due process claim. Id. at 484. More broadly, the court indicated that, like prison inmates, a ch. 980 patient may not "nickel and dime his way into a federal claim by citing small, incremental deprivations of physical freedom." Id. Petitioner has not alleged that any of the conditions of confinement to which he is subject at the Racine County jail are atypical and significant in comparison to the conditions at Sand Ridge. In fact, he has not alleged any specifics about the conditions of his confinement at the jail. Therefore, he has failed to state a due process claim and will be denied leave to proceed.

C. The Volden Decision

In his prayer for relief, petitioner asks this court to overrule the Wisconsin Court of Appeals' ruling in Volden. Petitioner argues that the holding must be overruled because it violates his rights under the due process and equal protection clauses of the Fourteenth Amendment and his right to prompt and adequate treatment under Wis. Stat. § 51.61(f). He alleges further that the Volden decision must be overruled because it is the job of the Wisconsin legislature to enact laws and the legislature has not enacted any law that deprives

ch. 980 patients of their rights under Wis. Stat. § 51.61.

Lower federal courts have no authority to overrule the decision of a state court; in fact, the Rooker-Feldman doctrine holds that lower federal courts do not even have jurisdiction to hear claims seeking review of state court judgments "because no matter how erroneous or unconstitutional the state court judgment may be, the Supreme Court of the United States is the only federal court that could have jurisdiction to review a state court judgment." Taylor v. Federal National Mortgage Ass'n, 374 F.3d 529, 532 (7th Cir. 2004) (citing Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983)). Because this court does not have jurisdiction to hear petitioner's claim that the Volden decision violates his constitutional rights, he will be denied leave to proceed on this claim.

ORDER

IT IS ORDERED that:

1. Petitioner Daniel Williams is DENIED leave to proceed in forma pauperis on all claims raised in this lawsuit;

2. This case is DISMISSED with prejudice for petitioner's failure to state claim upon which relief may be granted;

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

Entered this 28th day of October, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge