

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

DAVID WAYNE CUNDY,

Plaintiff,

v.

ORDER

PAM WALLACE, MATTHEW J. FRANKS,
JAMES WELLS, MS. NYHUS, M. MARX,
JILL SWEENEY, THOMAS KARLEN, JOHN
RAY and RICHARD RAEMISCH,

06-C-221-S

Defendants.

Upon receipt of plaintiff's partial filing fee in the amount of \$6.34 the Court addresses the merits of his initial complaint. According to 28 U.S.C. § 1915(b)(2), the institution's financial officer is authorized to deduct monthly payments from plaintiff's account until the \$350.00 filing fee is paid in full.

Plaintiff alleges that he is being incarcerated after his mandatory release date and seeks release from prison. The proper procedure to obtain this remedy is a petition for a writ of habeas corpus. This Court, however, cannot address plaintiff's petition until he has exhausted his state court remedies. Accordingly, plaintiff's complaint will be dismissed without prejudice for his failure to state a claim under 42 U.S.C. § 1983.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already

provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that plaintiff's complaint and all claims contained therein is DISMISSED without prejudice for failure to state a claim under 42 U.S.C. § 1983.

Entered this 16th day of May, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge