

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

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ORLANDO LARRY,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS  
and JOANNE ANDERSON,

Respondents.  
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ORDER

06-C-223-C

In an order dated May 12, 2006, I stayed a decision whether to grant petitioner Orlando Larry leave to proceed in forma pauperis on a claim that his due process rights were violated while he was detained at the Dane County jail pending a probation revocation hearing. After reviewing the sparse allegations in petitioner's proposed complaint, I concluded that the only discernible federal claim was that petitioner was not afforded the preliminary hearing required by Gagnon v. Scarpelli, 411 U.S. 778 (1973), after he was arrested and placed on a probation hold on October 21, 2005. A document attached to petitioner's proposed complaint indicated that he was charged with four violations of his probation: one count of failing to report to his probation officer, two counts of having contact with a woman named Lakeshia Collier and one count of driving a vehicle without

a valid license. However, nothing in petitioner's proposed complaint or the attached documents indicated that he had admitted engaging in conduct that violated the terms of his probation before or shortly after he was detained in October 2005. (If petitioner had made such an admission at or near the time of his detention, he would not be entitled to a preliminary hearing.) Accordingly, I gave petitioner until May 19, 2006 in which to submit a supplement to his complaint indicating whether he admitted to his probation officer or any other law enforcement officer any conduct that violated the terms of his probation at or near the time he was detained.

On May 22, 2006, petitioner filed a supplement to his complaint consisting of a letter and several attachments. In the letter, petitioner states that he never admitted violating the terms of his probation until his final revocation hearing. One of the attachments to petitioner's letter is a copy of a statement that petitioner says he gave to respondent Anderson, his probation agent. His "statement" consists of two pages that contain five questions and petitioner's answers to those questions. I have reproduced the questions and answers below.

**On or about 9/17/05, why did you have contact with Lakeshia Collier?**

I didn't have contact with Lakeshia.

**On or about 09/17/05 why did you drive off in Lakeshia Collier's car, leaving her stranded at Walgreen's? I didn't take her car.**

**On 10/21/05 why did you have contact with Lakeshia Collier? I didn't**

have contact with her she confronted me about some woman that I met went hysterical [sic] threatened to have me sent to jail I went to the police myself and explained that she's just trying [to] cause problems with me because of the other woman they allowed me to leave and told me that they were gonna be arresting her because of her behavior. So I thought.

**On 10/21/05 why were you driving Lakeshia Collier's vehicle? Explain.**  
I wasn't driving her car. She owns a Mazda the [ ] Grey Bonneville is mine. She registered my car in her name without my consent. The consent came from my mom.

**On 10/21/05 why did the police stop you?** They said they received a call that Lakeshia told them that I was driving around with a gun and stole her plates from off of her car this was not true as the police searched the vehical [sic] officers questioned me earlier that night and allowed me to leave with my vehical [sic] thats why she made a call to the department alleging that I stole her plates and had a gun. I didn't give my mother consent to put the vehical [sic] in Lakeshia's nam[e].

The two pages are labeled "page 2 of 3" and "page 3 of 3." Petitioner has not attached the first page. Therefore, it is possible that this is not the complete statement petitioner made to respondent Anderson. However, at this stage of the proceedings, I must assume that the answers petitioner provided are the entirety of his admissions to respondent Anderson. With that assumption in mind, I cannot say with certainty that petitioner admitted to any of the charged violations. To repeat, petitioner was charged with failing to report to his probation officer, having contact with a woman named Lakeshia Collier on two separate occasions and driving a vehicle without a valid license. Nothing in his statement can be construed as an admission that he failed to report to his probation officer. Moreover,

petitioner denied having contact with Collier on September 17, 2005 and October 21, 2005, although he admitted that she confronted him on October 21. Finally, petitioner's answers to the last two questions suggest that petitioner was stopped by the police while driving a grey Bonneville on October 21, 2005, but petitioner does not admit that he did not have a valid driver's license.

Because the supplement does not show conclusively that petitioner admitted to respondent Anderson that he violated a term of his probation, it is possible that petitioner may be able to show that he was entitled to a preliminary hearing shortly after his detention on October 21, 2005 and not accorded one. Accordingly, I will allow petitioner to proceed in forma pauperis on this due process claim against respondent Anderson. Petitioner will be denied leave to proceed against respondent Department of Corrections because he has not alleged that the violation of his rights was the result of any policy, practice or custom enforced by the department. Monell v. Department of Social Services, 436 U.S. 658, 690 (1978) (local governmental body liable under § 1983 only where unconstitutional action "implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers"); Starzenski v. City of Elkhart, 87 F.3d 872, 879 (7th Cir. 1996).

ORDER

IT IS ORDERED that

1. Petitioner Orlando Larry's request for leave to proceed in forma pauperis is GRANTED on his claim that respondent Joanne Anderson violated his rights under the due process clause of the Fourteenth Amendment by failing to provide petitioner with a preliminary hearing after his detention on October 21, 2005;

2. Respondent Department of Corrections is DISMISSED from this case;

3. For the remainder of this lawsuit, petitioner must send respondent a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondent, he should serve the lawyer directly rather than respondent. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

4. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. Pursuant to an informal service agreement between the Attorney General and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney

General for service on the state defendant.

Entered this 25th day of May, 2006.

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