IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WENDELL DWAYNE O'NEAL,
1738 Roth Street,
Madison, Wisconsin 53703,

ORDER

Petitioner,

06-C-243-C

v.

DERRICK COLEMAN, TURNING POINT, INC.,
1500 Golden Valley Road, Minneapolis,
Minnesota 55411; ROBIN MARTINSON, 1315
Penn Ave., Minneapolis, Minnesota 55411;
P.O. Y. FANG, sic, VANG, 367 Grove Street,
St. Paul, MN. 55101; CAROL J. ENGEL,
MINNESOTA DEPT. OF CORRECTIONS
SUPERVISOR, 1450 Energy Park Dr., Ste. 200,
St. Paul, Minnesota 55108; HENNEPIN COUNTY
PROBATION, MINNESOTA DEPT. OF
CORRECTIONS, 1450 Energy Park Dr., Ste. 200,
St. Paul, Minnesota 55108; COUNTY OF
HENNEPIN, 300 S. Sixth Street, Minneapolis,
Minnesota 55487; MONROE COUNTY DISTRICT
ATTORNEY OFFICE, 112 S. Court Street, RM. 201,
Sparta, Wisconsin 54656; COUNTY OF MONROE,
112 S. Court Street, Rm. 103, Sparta, Wisconsin 54656,

Respondents.

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This is a proposed civil action for monetary relief brought pursuant to various civil

rights statutes, including 42 U.S.C. §§ 1981 and 1983. Petitioner Wendell Dwayne O'Neal seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the fees and costs of instituting this lawsuit.

In addressing any pro se litigant's complaint, the court must construe the complaint liberally, Haines v. Kerner, 404 U.S. 519, 521 (1972), and grant leave to proceed if there is an arguable basis for a claim in fact or law. Neitzke v. Williams, 490 U.S. 319 (1989). However, if the action is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief, the case must be dismissed promptly pursuant to 28 U.S.C. § 1915(e)(2).

This is the fifth lawsuit petitioner has filed in this court since the end of December 2005. The allegations in petitioner's proposed complaint are divided into 64 paragraphs that span 27 pages. Petitioner divides his allegations into 18 "counts" against a variety of individuals and government agencies in Wisconsin and Minnesota. His allegations form a rambling narrative of events involving petitioner that occurred in Alabama, Minnesota and Wisconsin in 2004, 2005 and 2006. Pervading the allegations are petitioner's belief that various state officials are on a mission to label him a drug addict and his tendency to assign sinister and conspiratorial motives to those who interact with him. The allegations are

grouped under such headings as "Conspired Unlawful Detainment," "Abuse of Lawful Process" and "Conspired False Arrest." As with his other complaints, it is difficult to construct a coherent narrative of facts because petitioner's allegations are disorganized and confusing. To be fair, I have quoted liberally from the proposed complaint. From the allegations in his proposed complaint and the attached documents, I understand petitioner to be alleging the following.

ALLEGATIONS OF FACT

Petitioner Wendell Dwayne O'Neal is a Melanic. His descendants hail from Africa. He is "classified, and recognized, as a person, who suffers mental illness, by virtue of diagnosis, and receipt of S.S.I. disbursement from the U.S. Dept. of Social Security, since 2001[.]" Petitioner is a political activist in the Melanic community and was a legal and spiritual advisor for the Melanic Islamic Palace of the Rising Sun, which was designated a "Security Threat Group" by the state of Michigan and the federal government.

In December 2004, petitioner pleaded guilty to a charge of attempted robbery in Hennepin County, Minnesota and was sentenced to a term of probation. His assigned probation officer was respondent Robin Martinson. Petitioner asked respondent Martinson to have his probation transferred to Alabama, where his mother lives. Respondent Martinson denied petitioner's request because the transfer "involved a lengthy time process"

and because petitioner was required to obtain a "chemical assessment, to determine whether he required treatment." In addition, respondent Martinson denied petitioner's request to visit his mother.

The terms of petitioner's probation required him to refrain from breaking the law and to obtain a "chemical assessment." They did not require him to provide a urine sample. Respondent Martinson did not request that petitioner report to her in person. She was satisfied with communicating with him over the telephone. During one of their telephone conversations, respondent Martinson asked petitioner to obtain a "chemical dependency assessment" to determine whether he had a drug problem that required treatment. Petitioner visited an

> Afrikan-American oriented, community based facility, resulting in both unqualified, and unsupported decision for chemical treatment, undisputed by [petitioner] at said time, specifically, on account of assumed requirement, by unmentioned decision making factor.

When respondent Martinson learned that petitioner's conditions did not require a urine test, she scheduled a "court appearance" to add a urine test requirement to the terms of his probation. Meanwhile, petitioner had been placed in a facility for his "chemical dependency" but was discharged within 24 hours because staff stated that they were unable to "fulfill his medical necessities." He was referred to respondent Turning Point, another drug and alcohol treatment facility in Minneapolis, Minnesota, which is licensed by the state

of Minnesota.

Upon arriving at respondent Turning Point, petitioner was not interviewed. He signed a contract for in-patient treatment. He did not receive any orientation "as to the rules." However, the rules were posted on a bulletin board and he did receive a written copy of them. While at the facility, petitioner was required to do chores, including cleaning urinals, sinks and showers. Petitioner refused to do these chores, citing "past back injuries." Respondent Derrick Coleman, an employee at the facility, threatened to discharge petitioner and demanded that petitioner provide his medical records to substantiate his injuries. Petitioner submitted a form to "HCMC hospital" in Minneapolis, Minnesota, requesting that his medical records be sent to the facility. (I presume that "HCMC" refers to the Hennepin County Medical Center, which is located in Minneapolis.) The hospital sent the records to respondent Coleman. However, when petitioner asked respondent Coleman whether he had received them, respondent Coleman said that the hospital had not sent them. Petitioner contacted the hospital and was informed that the records had been sent to respondent Coleman. Petitioner made a second request to have his medical records sent to the facility. Respondent Coleman denied receiving this second request, although he stopped threatening to discharge petitioner. When petitioner asked staff at respondent Turning Point to give him his medical records they refused, telling him that his records were "located in some file" and that respondent Coleman no longer worked at the facility.

Before petitioner entered respondent Turning Point, he filed a petition for appointment of counsel in connection with his appeal of his guilty plea. A lawyer named Tony Atwal was assigned to represent him. Atwal contacted petitioner while he was at respondent Turning Point but staff at the facility denied petitioner use of his cell phone and the telephone at the facility so he could not contact Atwal. Petitioner asked staff at respondent Turning Point to fax a letter dated March 14, 2005 in which he inquired whether Atwal had filed an appeal on his behalf. Petitioner received a letter from Atwal dated March 14, 2005 "opposing his appellate pursuit, by all means." In the letter, Atwal wrote that he had filed a notice of appeal but that he would have to withdraw it because petitioner had not filed a motion to withdraw his guilty plea in the trial court. Because petitioner had not done this, there was nothing for the court of appeals to review. Also, Atwal encouraged petitioner to attend the hearing scheduled by respondent Martinson to clarify the terms of his probation.

Petitioner faxed a transcript of his sentencing hearing to respondent Martinson to show that the court had not ordered him to provide a urine sample. Petitioner did this in an attempt "to communicate his unwillingness to cooperate" with her attempt to modify the terms of his probation. He wanted to "forgo" the hearing she arranged. Had petitioner known when he pleaded guilty that he would have to submit a urine sample,

he would have immediately sought plea withdrawal, by intent perceived to

> label him a drug user, in believed attempt, to justify said charge and conviction against him which, for sometime now, he passionately seeks to eradicate, through both appellate, and civil action pursuits, before this court.

On or about March 17, 2005, respondent Coleman asked petitioner to leave respondent Turning Point because petitioner

> refused to wear an over-sized wooden police badge, in violations of said facilities ancient tradition, which emblem was also used to entice, lure and incite other residents to cause, by any means necessary, the person wearing it, to remove it from around their neck, to face consequential penalty of being forced to wear it, for an additional extended time period, which he declined, to avoid such described assault, left to imagination of drug and, or alcohol addicted in-patients, residing at said facility.

Respondent Coleman said that petitioner's refusal to participate in this activity "was inciteful towards residents; and, an act of defiance against his authority." Petitioner refused to leave the facility because that would have violated the terms of his probation. Instead, he called respondent Martinson and the Minneapolis Police so that he could be escorted from the facility and file a report concerning the cause of his removal. The police arrived and took petitioner to respondent Martinson's office, where respondent Martinson "arranged for his arrest and detention." Petitioner was transported to the Hennepin County jail for failing to complete his treatment. Petitioner was released on March 18, 2005

> with new court Ordered stipulations, for desired chemical i.e. urine analysis, and an additional random breathalyzer, and further to ensure his 29 MAR 05 aforesaid scheduled court appearance, in that herein Defendants could modify his probation conditions, to add Order for said now imposed urine analysis requirement[.]

At some point after he was released, respondent Martinson told petitioner that Barbara Kherberg, the public defender who represented plaintiff in connection with his guilty plea in December 2004, had changed the date of his hearing to May 4, 2005.

At the hearing, the terms of petitioner's probation were changed to include a urine test and his sentence was corrected. Also at the hearing, respondents Martinson

> denied Morissey hearing, supra, contrivance, together with herein Defendants; appointed trial counsel; and court, further caused appellate jeopardy against Plaintiff, by appointed appeal counsel, ATWAL, being unable to report to the Minnesota Court of Appeals, denial of said hearing against him, consequently resulting in said appeal being both subject to sanction, and dismissal, by said appointed appeal counsel[.]

A copy of the case history concerning the attempted robbery charge to which petitioner pleaded guilty in December 2004, which is attached to petitioner's proposed complaint, indicates that petitioner's probation was not revoked at the May 4 hearing. The case history indicates further that, on May 4, the Minnesota Court of Appeals issued an order granting petitioner's motion to stay his appeal pending a decision on revocation of petitioner's probation. (I presume that Atwal filed the motion to stay.) The court of appeals ordered Atwal to file a weekly status letter with the court concerning the revocation proceedings.

Petitioner relocated to Ramsey County and "obtain[ed] another chemical assessment" at the Ramsey County Human Services Department in St. Paul, Minnesota. Petitioner was examined by Kimberly Carpenter, a social worker in the Chemical Health Assessment Unit.

The unit requires "collateral witness and, or evidence, to support a findings of chemical abuse and, or dependency." This forced respondent Martinson to reveal that all of petitioner's urine tests since December 2004 were negative. However, Carpenter did not believe respondent Martinson's report and wrote a report that "characterized him in a not so favorable light," although she found that he did not require "any chemical treatment."

Respondent Martinson denied petitioner's requests to obtain an out-of-state travel permit because he had not had a "chemical assessment and, or treatment originally Ordered." After the hearing on petitioner's probation, respondent Martinson reported that petitioner's urine analysis was negative and he received permission to travel outside Minnesota. At some point, petitioner traveled to Alabama. Respondent Martinson sent him a form entitled "Interstate Commission for adult Offender Supervision; OFFENDER APPLICATION FOR INTERSTATE COMPACT TRANSFER" in Alabama. Petitioner completed the form on May 26, 2005 "to effectuate the process of transferring his probation supervision to the state of Alabama." Above his signature on the form was a provision waiving petitioner's right to contest extradition. Petitioner noted a provision on the form requiring him to forfeit "his constitutional rights against unlawful searches, at his place of residence; urinalysis submissions; and, most concernly, disclosure of his medical records, to the state of Alabama from any source." Petitioner did not believe that he should be required to agree to the disclosure of all of his medical records. He drafted a "document" dated May 27, 2005

"limiting the states of Minnesota & Alabamas' ability to obtain his medical history" to those records possessed by his current physician, Dr. Low. Petitioner faxed this letter to respondent Martinson. Later, petitioner returned to Minnesota and obtained an out-of-state travel permit from respondent Minnesota Department of Corrections on July 7, 2005 to visit his mother in Alabama. He did not return to St. Paul until August 14, 2005.

On August 15, 2005, petitioner was arrested for trespassing by respondent Vang, a police officer. Respondent Vang failed to make a police report in connection with his initial encounter with petitioner, which occurred at a Radisson Hotel in St. Paul after petitioner called 911 to "retrieve his wallet taken by P.O. Higgins." Respondent Vang failed to surrender the property he took from petitioner and the property petitioner had stolen from the hotel to the Ramsey County Sheriff's Department because police records indicate "that he did not clear from 01:30a.m. arrest dispatch, until, at least three hours later." Petitioner's arrest violated the terms of his probation, which required him "to remain law abiding." However, respondents Martinson, Hennepin County Probation, County of Hennepin and Minnesota Department of Corrections conspired to deny petitioner due process by failing to "violate" him in connection with this arrest, thereby preventing him from exposing

> efforts made by Defendant P.O. Y. FANG, sic, VANG, to interfere with his aforesaid appellate efforts, by way of taking both money and property necessary for sustenance, to continue said appellate pursuits, through a reverse abuse of lawful process to deny Morissey hearing, otherwise obtainable through lawful provision of STAY REVOCATION, M.S.A. 609.14.,

> proceeding, before aforesaid trial court, by ignoring said offense, contrary to requirement to then violate him.

Petitioner appeared at the Ramsey County chemical assessment office on August 23, 2005 for another assessment. Petitioner was assessed by Bill McDow, who "refused to document his findings of no substance usage but, utilized the same data sheet recorded at said earlier assessment, with exception of futile attempt, to add derogatory comment alleging intoxication against him, as reported by Defendant MARTINSON."

Respondent Martinson authorized an out of state travel permit for petitioner to travel to Alabama in September 2005. She instructed petitioner to report to Tricia Uselton, a probation agent in Alabama, after he arrived there on September 6, 2005. Petitioner reported as instructed "but was refused opportunity to register as having reported" because (1) Alabama had not accepted supervision of petitioner's probation; (2) Uselton did not have petitioner's file from Minnesota; and (3) petitioner had revoked the interstate compact agreement on May 27, 2005 by limiting access to his medical records. Petitioner contacted Uselton several times but was urged to return to Minnesota because "they could not lawfully and, would not unlawfully risk attempting to fake at supervising him, having noted civil rights action filed against Defendant VANG." He contacted respondent Martinson's office "which advised him free of probation supervision."

Petitioner left Alabama on November 3, 2005 to return to Minnesota because a

hearing in connection with his August 15, 2005 arrest for trespass was scheduled for November 4, 2005. The hearing was scheduled to consider petitioner's motion to withdraw his guilty plea. The time for the hearing was rescheduled from 11:00 a.m. to 9:00 a.m. and petitioner was unable to attend. Instead of returning to St. Paul, petitioner stopped in Madison, Wisconsin.

On February 27, 2006, respondents Carol Engel, Hennepin County Probation, County of Hennepin and Minnesota Department of Corrections issued a two-count complaint against petitioner charging him with failing to keep in contact with his probation officer and "complete active probation." The complaint alleged that petitioner "left the state without knowledge or permission of probation." On February 28, 2006, petitioner's 90-day stay at a shelter run by Grace Episcopal Church expired. On March 4, 2006, petitioner was arrested at a Greyhound bus terminal in Tomah, Wisconsin. From March 4 to March 16, 2006, petitioner was detained at the Monroe County jail and at the Hennepin County Adult Detention Center in Minneapolis.

Petitioner suffered "mental and emotional distress; anxiety; embarrassment, degradation, and humiliation" while he was arrested and searched. He was placed in a holding cell at the Monroe County jail until Allan Batty, a public defender in Monroe County, interviewed him on March 6. Batty told petitioner that an extradition hearing was scheduled for March 7, 2006. However, on March 6, respondents faxed the application for

interstate transfer that petitioner signed to the Monroe County Sheriff's Department. The extradition hearing was not held because petitioner waived his right to contest extradition in the application for interstate transfer. Respondent Hennepin County Probation, an agency of respondent County of Hennepin and respondent Minnesota Department of Corrections, has instituted a policy of denying extradition hearings for persons who sign applications for interstate transfer. Respondent Monroe County District Attorney Office, an agency of respondent County of Monroe, has instituted a policy of accepting waivers of extradition hearings without investigating the validity of the waivers.

From March 4-7, 2006, respondents Monroe County District Attorney Office and County of Monroe unlawfully detained petitioner without bail or a hearing to determine the legality of the February 27, 2006 complaint issued against petitioner. On March 8, 2006, petitioner appeared before Judge Wexler in Hennepin County Circuit Court. However, the hearing was continued until March 15, 2006 after petitioner declined to be represented by Kherberg. Petitioner was detained in a segregated holding cell because he feared that respondents "or their employed representatives, whether, or not inmates, would attempt to either allege, or cause a violation against him, to justify any allegation believe would balance offenses committed against him." On March 14, 2006, respondent Engel visited petitioner and he told her that he wanted to call Tricia Uselton and her supervisor as witnesses at his hearing. However, petitioner was not

> permitted to make the aforesaid 15 MAR 06, scheduled appearance, pursuant to lawful authority of STAY REVOCATION, M.S.A. 609.14., ET. SEQ., due to manipulation of the court docket and; or process for assignment of judges, in the 4th judicial district court, amounting to a shopping expedition, to assign his matter before judge, HOPPER, in mental health court, for reasons, not totally clear to him, other than to imply that, somehow, something is wrong with Plaintiff, becoming wrongfully charged; arrested, and detained[.]

Plaintiff appeared before Judge Hopper to contest the February 27 complaint. Respondents moved to quash the complaint and the court granted the motion and released petitioner. Petitioner was assigned a new probation officer, Chuck Decker. On March 27, 2006, petitioner filed a "STAY REVOCATION DISMISSAL MOTION" with the court.

DISCUSSION

A. Denial of Requests to Visit Alabama and Transfer Probation

Petitioner contends that respondent Martinson denied him due process of law by denying his request to have supervision of his probation transferred from Minnesota to Alabama and his request to visit his mother in Alabama. The Supreme Court has stated that the basic purpose of probation is "to provide an individualized program offering a young or unhardened offender an opportunity to rehabilitate himself without institutional confinement under the tutelage of a probation official and under the continuing power of the court to impose institutional punishment for his original offense in the event that he abuse this opportunity." Roberts v. United States, 320 U.S. 264, 272 (1943). Restricting

the movement of individuals on probation is appropriate in some cases to facilitate proper supervision and to punish the probationer for his unlawful conduct. United States v. Scheer, 30 F. Supp. 2d 351, 353 (E.D.N.Y. 1998).

According to petitioner's allegations, respondent Martinson refused to allow petitioner to go to Alabama because a transfer would involve "a lengthy time process" and because petitioner had not had a "chemical assessment" at the time of his requests. I understand "chemical assessment" to refer to drug testing. The terms of petitioner's probation required him to undergo drug testing. He concedes that at the time he asked respondent Martinson for permission to go to Alabama, he had not been tested. Therefore, as a practical matter, respondent Martinson was justified in denying his requests.

Petitioner's allegations fail to state a due process claim as well. To state a due process claim, petitioner's allegations must support an inference that state officials interfered with a liberty or property interest without providing adequate legal process. Revocation of probation implicates a protected liberty interest. United States v. Kirtley, 5 F.3d 1110, 1112 (7th Cir. 1993); United States v. Dodson, 25 F.3d 385, 388 (6th Cir. 1994). However, a request to have jurisdiction over one's probation transferred and a request to travel do not. Denial of these requests does not impose greater restrictions on a probationer's liberty. Cevilla v. Gonzales, 446 F.3d 658, 662 (7th Cir. 2006) ("no due process challenge may be made unless the challenger has been (or is threatened with being)

deprived of life, liberty, or property"). In addition, although not dispositive, I note that petitioner fails to identify any specific formal process that he was not accorded in connection with the processing of his requests. Simply put, individuals on probation do not have a constitutional right to have supervision of their probation transferred from one jurisdiction to another. In the same vein, because they are under the court's supervision, their constitutional entitlement to travel can be restricted as part of their term of probation. Because petitioner's right to travel was restricted by his probation status, he was not entitled to any formal process in connection with the processing of his travel requests. Petitioner will be denied leave to proceed on a constitutional claim concerning his requests to have supervision of his probation transferred to Alabama and to visit his mother.

B. Modification of Terms of Probation

Petitioner's allegations reflect his belief that respondent Martinson violated his rights by attempting to have the conditions of petitioner's probation modified to include an explicit requirement that he provide a urine sample for drug testing. Petitioner alleges that he disagreed with her decision and tried to communicate his intention not to attend the hearing to amend his probation conditions. Further, petitioner contends that he would not have pleaded guilty had he known that the terms of his probation would include giving a urine sample. Petitioner's allegations fail to state a claim under the due process clause or any

other constitutional provision. Putting aside the question whether respondent Martinson's decision to seek a modification implicated a liberty interest, petitioner concedes that a hearing was held on May 4, 2005 before the urine test requirement was added. Therefore, to the extent petitioner was entitled to any process, he concedes that he received it.

Petitioner's allegation that he would not have pleaded guilty if he had known that he would be required to submit a urine sample suggests that his plea may not have been knowing and voluntary. In Brady v. United States, 397 U.S. 742, 748 (1970), the Supreme Court held that a defendant's guilty plea must be voluntary and "knowing . . . done with sufficient awareness of the relevant circumstances and likely consequences." The Court explained further that a voluntary plea is one entered into by a defendant "fully aware of the direct consequences" of his action. Id. at 755. Petitioner's allegations might be sufficient to state a due process claim but I need not answer that question because Heck v. Humphrey, 512 U.S. 477 (1994) bars petitioner from proceeding on this claim. In that case, the Supreme Court held that "in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence 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, 512 U.S. at 486-87. From

another case petitioner has litigated in this court, I am aware that he was unsuccessful in withdrawing his guilty plea. O'Neal v. Atwal, 05-C-739-C. A decision that his plea was not entered knowingly and voluntarily would imply the invalidity of his conviction. Accordingly, he is barred from bringing suit on this claim for monetary relief under § 1983. Heck, 512 U.S. at 487.

From the tenor of petitioner's allegations, it appears that this claim boils down to a disagreement with respondent Martinson's decision to seek modification of the terms of petitioner's probation. To the extent this is the case, petitioner should be aware that mere disagreements with the decisions of state actors are not, without more, of constitutional magnitude. Petitioner will be denied leave to proceed on a due process claim concerning respondent Martinson's decision to seek a modification of the terms of his probation to include a requirement that he provide a urine sample.

C. Request for Medical Records

Petitioner alleges that he refused to do certain chores while a patient at respondent Turning Point because he had back injuries. Respondent Coleman told petitioner that petitioner would need to provide medical documentation of these injuries or he would be discharged as a patient. Thereafter, petitioner submitted two requests to the Hennepin County Medical Center for production of his medical records to respondent Turning Point.

In this section, I will examine petitioner's allegations concerning respondent Coleman's request that petitioner provide medical proof of his back injuries under federal law. I will discuss the claims petitioner asserts in his proposed complaint in section J below.

1. Due process

Both the federal constitution and federal law protect the privacy of medical information. The due process clause of the Fourteenth Amendment has been interpreted to protect "the individual interest in avoiding disclosure of personal matters." Whalen v. Roe, 429 U.S. 589, 599-600 (1977); see also Pesce v. J. Sterling Morton High School, 830 F.2d 789, 795 (7th Cir. 1987) ("The federal constitution does, of course, protect certain rights of privacy including a right of confidentiality in certain types of information."). The Court of Appeals for the Seventh Circuit has stated that this protection extends to medical records and communications. Anderson v. Romero, 72 F.3d 518, 522 (7th Cir. 1995); Schaill v. Tippecanoe County School Corp., 864 F.2d 1309, 1322 n.19 (7th Cir. 1989) (recognizing "a substantial privacy interest in the confidentiality of medical information").

However, petitioner's allegations fail to state a claim under the due process clause for two reasons. First, the clause applies only to state action. Lekas v. Briley, 405 F.3d 602, 607 (7th Cir. 2005). Therefore, respondent Coleman's request for petitioner's medical records will be actionable under the due process clause only if it can be considered state

action. Petitioner's allegations do not indicate whether respondent Turning Point is a state actor. The closest he comes on this count is his allegation that respondent is licensed by the state of Minnesota. But regulation by the state is not enough by itself to convert respondent Turning Point's actions into state action. Jackson v. Metropolitan Edison Co., 419 U.S. 345, 350 (1974) ("The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment.").

Petitioner has attached to his proposed complaint a fax cover sheet from respondent Turning Point that lists its website, http://www.ourturningpoint.org. The website describes respondent Turning Point as a not-for-profit agency that provides services to the community and receives funding from private and governmental sources, including the United Way, the Minnesota Department of Health, the Hennepin County Department of Corrections, the Hennepin County Department of Human Services and the YWCA. Not-for-profit agencies do not become state actors because they perform a public service. Rendell-Baker v. Kohn, 457 U.S. 830, 842 (1982) ("That a private entity performs a function which serves the public does not make its acts state action."). Similarly, a private entity's receipt of substantial funding by the state and local governments does not convert its action into state action. Id.; Wolotsky v. Huhn, 960 F.2d 1331, 1336 (6th Cir. 1992). Nothing in petitioner's allegations suggests that the state of Minnesota or Hennepin County influenced or compelled respondent Coleman's decision to request petitioner's medical records. Blum

v. Yaretsky, 457 U.S. 991, 1004 (1982) ("a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State").

Even if the state action requirement was satisfied, petitioner would still be denied leave to proceed on a due process claim because he authorized the disclosure of his medical information to respondent Turning Point. The Constitution's protection of private, personal information applies only where an individual seeks to *prevent* the government from releasing, using or otherwise exploiting that information. For example, in Whalen, 429 U.S. at 593, prescription drug users sought to enjoin enforcement of a New York law that required pharmacists and physicians to send certain personal information about their patients to the state department of health. In Anderson, 72 F.3d at 520, an inmate sued jail officials for disclosing the fact that he had HIV to another guard and at least one inmate. Although petitioner may believe that he was forced to turn over his medical records, the fact remains that he asked the hospital twice to send his medical records to respondent Turning Point. A different case would be presented if a state agency had obtained petitioner's medical information without his consent. But that is not the case here. Accordingly, petitioner will be denied leave to proceed on a due process claim concerning respondent Coleman's request that petitioner provide medical records to substantiate his back injuries.

2. The Health Insurance Portability and Accountability Act

Medical information is also protected from unauthorized disclosure by the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d-6. This statute "imposes requirements on the Department of Health and Human Services, health plans, and healthcare providers involved in the exchange of health information to protect the confidentiality of such information and provides for both civil and criminal penalties for individuals who improperly handle or disclose individually identifiable health information." Johnson v. Quander, 370 F. Supp. 2d 79, 99 (D.D.C. 2005). However, I need not determine whether petitioner's allegations state a possible claim under this statute because the text of the statute does not provide a private right of action and two federal courts have concluded after thorough and persuasive analyses that no implied right of action exists. Johnson, 370 F. Supp. 2d at 99-100; University of Colorado Hospital v. Denver Publishing Co., 340 F. Supp. 2d 1142, 1144-46 (D. Colo. 2004). Therefore, petitioner will be denied leave to proceed on this claim.

D. Discharge from Respondent Turning Point

Petitioner contends that he was (1) falsely arrested for violating the terms of his probation after being escorted from respondent Turning Point on March 17, 2005; (2) unlawfully detained at the Hennepin County jail following his arrest; and (3) maliciously

prosecuted. At the outset, I note that petitioner's allegations concerning the cause for his discharge from the facility are almost incomprehensible. It appears that petitioner was discharged from respondent Turning Point after refusing to wear "an over-sized wooden police badge." Petitioner believed that if he wore the badge, he would be assaulted by other residents at the facility. He alleges that respondent Coleman asked him to leave because petitioner's refusal to wear the badge "was inciteful towards residents; and, an act of defiance against his authority." Petitioner concedes that leaving the facility violated the terms of his probation. He concedes also that he chose to leave the facility rather than wear the badge.

Petitioner's claims appear to stem from his belief that he was discharged from the facility without good cause. Therefore, from his perspective, all of the events that followed were illegal. However, petitioner admits that he chose to leave the facility rather than follow an instruction given by respondent Coleman. This concession dooms all of his claims.

Claims of false arrest and unlawful detainment implicate the Fourth Amendment, which protects individuals from governmental searches and seizures that are unreasonable. Pepper v. Village of Oak Park, 430 F.3d 805, 809 (7th Cir. 2005). However, where probable cause exists, law enforcement officials may arrest an individual and detain him for days before charging him with a crime or releasing him. Holly v. Woolfolk, 415 F.3d 678, 680 (7th Cir. 2005); Edmond v. Goldsmith, 183 F.3d 659, 669 (7th Cir. 1999). Probable cause exists where an officer is aware of facts "sufficient to warrant a prudent person in believing

that the suspect had committed or was committing a crime." Marshall ex rel. Gossens v. Teske, 284 F.3d 765, 772 (7th Cir. 2002). In this case, petitioner was escorted from respondent Turning Point by Minneapolis police officers. He concedes that leaving the facility violated the terms of his probation. Therefore, respondent Martinson had probable cause to "arrange for his arrest and detention." Petitioner will be denied leave to proceed on his false arrest and unlawful detainment claims.

With respect to petitioner's malicious prosecution claim, the Court of Appeals for the Seventh Circuit has interpreted the United States Supreme Court's opinion in Albright v. Oliver, 510 U.S. 266 (1994) to preclude "constitutional torts of malicious prosecution when state courts are open to such challenges." Newsome v. McCabe, 256 F.3d 747, 751 (7th Cir. 2001). Petitioner contends that he was maliciously prosecuted in Minnesota, which recognizes a cause of action for malicious prosecution. Allen v. Osco Drug, Inc., 265 N.W.2d 639 (Minn. 1978); Kellar v. VonHoltum, 568 N.W.2d 186, 192 (Minn. Ct. App. 1997). Therefore, petitioner's malicious prosecution claim under federal law is barred. However, even if Newsome did not bar petitioner's claim, I note that his allegations undermine completely any suggestion that he was subject to malicious prosecution. Petitioner alleges that he was arrested on March 17, 2005 and released the next day. There is no indication that petitioner was prosecuted for violating the terms of his probation.

Finally, I note that petitioner alleges that respondent Coleman may have conspired

with one or more respondents (presumably respondent Martinson) to insure his appearance at the hearing on March 29, 2005 to modify the terms of his probation by discharging him from respondent Turning Point, knowing that he would be arrested and detained. Civil conspiracies to violate an individual's constitutional rights are actionable under § 1983 and § 1985(3). However, because respondent Martinson had probable cause to order petitioner's arrest and detention, petitioner has no basis for his conspiracy claim. Cefalu v. Village of Elk Grove, 211 F.3d 416, 423 (7th Cir. 2000) ("because the jury exonerated the defendants of any substantive constitutional violation, the conspiracy claim necessarily falters under this circuit's precedents"); Indianapolis Minority Contractors Ass'n Inc. v. Wiley, 187 F.3d 743, 754 (7th Cir. 1999) ("the absence of any underlying violation of the plaintiffs' rights precludes the possibility of their succeeding on [a] conspiracy count"). Petitioner will be denied leave to proceed on a conspiracy claim.

E. Hearing on Terms of Probation

Petitioner's allegations concerning what transpired at the May 4, 2005 hearing to amend the terms of his probation are, again, terribly confusing. Petitioner alleges that the terms of his probation were changed to include a urine test requirement. Less clear is petitioner's allegation that respondent Martinson and other unnamed respondents denied petitioner a "Morissey hearing" and caused him "appellate jeopardy." The case history

attached to petitioner's complaint indicates that his probation was not revoked at the May 4 hearing and that the Minnesota Court of Appeals granted a motion to stay petitioner's appeal on the same day as the hearing.

I presume that petitioner's use of the term "Morissey hearing" is a reference to the hearing to which individuals on probation are entitled before their probation is revoked. Morrissey v. Brewer, 408 U.S. 471 (1972); John v. United States Parole Commission, 122 F.3d 1278, 1282 (9th Cir. 1997). With that in mind, it appears that petitioner's claim is that respondents Martinson and other unidentified respondents violated his rights by deciding not to revoke his probation. His theory appears to be that by not revoking his probation, petitioner was denied a hearing at which he could contest his unlawful removal from respondent Turning Point and his subsequent unlawful arrest and detention. This is an unusual claim, to say the least. It is clear that petitioner is obsessed with proving that he was falsely charged with violating the terms of his probation, but this is not the court in which to do so. More important, petitioner's allegations, as I understand them, do not state any constitutional claim for the simple reason that petitioner's probation was not revoked at the May 4 hearing. Because petitioner's probation was not revoked, he was not entitled to a pre-revocation hearing.

Petitioner's reference to "appellate jeopardy" concerns his appeal of the December 2004 guilty plea. Petitioner contends that, because he was denied a revocation hearing, the

attorney representing him on appeal, Tony Atwal, was unable to inform the Minnesota Court of Appeals that petitioner had been denied that same hearing. This claim is nonsense. As Atwal explained in the letter he wrote to petitioner on March 14, 2005, petitioner's appeal was jeopardized because petitioner had not filed a motion to withdraw his plea before filing a notice of appeal.

F. Failure to Revoke Probation

Petitioner alleges that respondent Vang, a police officer, arrested him for trespassing at a hotel on August 15, 2005 in St. Paul, Minnesota. At the time of the arrest, respondent Vang failed to write a police report of the incident and confiscated certain property from petitioner, including the property petitioner had stolen from the hotel. Petitioner concedes that his arrest violated the terms of his probation. However, he alleges that respondent Martinson did not seek revocation of petitioner's probation. Petitioner faults her for this, contending that she conspired with respondents Hennepin County Probation, County of Hennepin and Minnesota Department of Corrections to deny petitioner a revocation hearing at which could he expose respondent Vang's efforts to interfere with his "appellate efforts" by confiscating his property.

It appears that respondent Vang searched petitioner in the course of arresting him and confiscated something (petitioner does not say what was taken from him). As I

understand it, petitioner's claim is that respondents conspired to deny petitioner due process of law by deciding not to seek revocation of his probation. By doing so, petitioner was denied a hearing at which he could have questioned respondent Vang about the items he confiscated from petitioner. Again, this claim is truly bizarre. Obviously, because respondent Martinson did not seek to revoke petitioner's probation, he had no constitutional right to a pre-revocation hearing. Because respondent Martinson's decision did not violate any of petitioner's constitutional rights, he will be denied leave to proceed on a conspiracy claim.

G. February 27, 2006 Complaint

The next set of claims petitioner asserts stem from a complaint filed against him in Hennepin County on February 27, 2006. According to petitioner's allegations, the complaint charged him with violating the terms of his probation. It stated that petitioner had failed to keep in contact with his probation officer and that he "left the state without the knowledge or permission of probation." On March 4, 2006, petitioner was arrested in Tomah, Wisconsin. Thereafter, he was detained until March 16, 2006, at the Monroe County jail (Tomah is located in Monroe County) and at the Hennepin County Adult Detention Center in Minneapolis.

I understand petitioner to allege that respondents Engel, Hennepin County

Probation, County of Hennepin and Minnesota Department of Corrections initiated a malicious prosecution against him by filing a false complaint and causing him to be arrested and detained from March 4-16, 2006. This claim covers the filing of the false complaint and petitioner's detention from March 4-16. I have already explained in section D why petitioner is barred from asserting malicious prosecution claims. For the reasons stated in that section, petitioner will be denied leave to proceed on a malicious prosecution claim in connection with the filing of a complaint against him on February 27, 2006.

H. Extradition Hearing

Petitioner alleges that he was not afforded an extradition hearing in Monroe County before being taken to Minnesota. According to his allegations, an extradition hearing was scheduled for March 7, 2006 but it was cancelled after respondents Engel, Hennepin County Probation, County of Hennepin and Minnesota Department of Corrections faxed the interstate compact transfer application petitioner completed on May 26, 2005 while in Alabama to the Monroe County Sheriff's Department. In the application, petitioner waived his right to contest extradition to Minnesota.

I understand petitioner to allege that respondents denied him procedural due process by faxing the interstate compact transfer application to the Monroe County Sheriff's Department. Also, I understand petitioner to allege that respondents Hennepin County

Probation, County of Hennepin and Minnesota Department of Corrections have instituted an unconstitutional policy, practice or custom of denying extradition hearings to individuals who sign interstate compact transfer applications. Petitioner believes that respondents faxed the application to prevent him from having a chance to explain at an extradition hearing that the complaint they filed against him contained false charges. Petitioner will be denied leave to proceed on these claims because he concedes that he waived his right to contest extradition by signing the interstate compact transfer application. It is not unconstitutional for a state to require individuals on probation to waive their right to contest extradition in exchange for allowing them to travel outside the state.

Finally, I understand petitioner to allege that respondents Monroe County District Attorney Office and County of Monroe have instituted an unconstitutional policy of accepting waivers of extradition and denying probationers extradition hearings without first verifying whether the waivers were validly executed. This is not a credible allegation. Moreover, it is legally meritless. The complaint and waiver were valid on their face. Respondents did not violate petitioner's rights by relying on them without conducting an investigation to insure that petitioner's waiver was valid. Petitioner will be denied leave to proceed on this claim.

I. Delayed Revocation Hearing

I understand petitioner to allege that his right of access to the courts was denied because his revocation hearing was postponed from March 8 to March 15, 2006. On March 8, 2006, petitioner appeared before a judge in Hennepin County Circuit Court; however, because he refused to be represented by Barbara Kherberg, his hearing was continued until March 15, 2006. It appears that at some point between March 8 and March 15, petitioner's case was transferred Judge Hopper in mental health court. Respondents filed a motion to quash the complaint, which Judge Hopper granted. Thereafter, petitioner was released.

Petitioner's contention that his right to "a timely judicial determination of probable cause" was violated is legally meritless because petitioner concedes that his refusal to accept Ms. Kherberg as his attorney was the cause of the delay. Therefore, he will be denied leave to proceed on this claim.

J. State Law Claims

Finally, I note that petitioner has asserted several state law claims in his proposed complaint, including invasion of privacy, intentional infliction of emotional distress, libel, slander and defamation of character. Because none of petitioner's allegations state a claim under federal law, I decline to exercise supplemental jurisdiction over his state law claims. These claims will be dismissed without prejudice to petitioner's raising them in the appropriate state court.

ORDER

IT IS ORDERED that

1. Petitioner Wendell Dwayne O'Neal's request for leave to proceed in forma pauperis is DENIED with respect to his claims that

a. Respondent Robin Martinson denied him due process of law by refusing his request to have supervision of his probation transferred from Minnesota to Alabama and his request to be allowed to travel to Alabama to visit his mother;

b. Respondent Martinson denied him due process of law by seeking to have the terms of his probation modified to include a requirement that he submit a urine sample for drug testing;

c. Respondent Martinson denied him due process of law by seeking to modify the terms of petitioner's probation to include a requirement that he provide a urine sample;

d. Petitioner's December 2004 guilty plea was obtained in violation of due process because it was not given knowingly and willingly;

e. Respondent Derrick Coleman's request that petitioner provide medical records to substantiate his back injuries violated petitioner's rights under the due process clause of the Fourteenth Amendment;

f. Respondents Coleman and Turning Point violated the Health Insurance Portability and Accountability Act by obtaining petitioner's medical records from the Hennepin County Medical Center;

g. Respondent Martinson violated petitioner's rights under the Fourth Amendment by having him arrested and detained after he was escorted from respondent Turning Point on March 17, 2005;

h. Respondent Martinson caused a malicious prosecution to be instituted against him following his arrest on March 17, 2005;

I. Respondents Coleman and Martinson conspired to insure petitioner's appearance at the March 29, 2005 hearing by having him removed from respondent Turning Point on March 17, 2005;

j. Respondent Martinson and other unidentified respondents violated his due process rights by denying him a Morrissey hearing at the May 4, 2005 hearing;

k. Respondents Martinson, Hennepin County Probation, County of Hennepin and Minnesota Department of Corrections conspired to deny petitioner due process by not seeking revocation of his probation following his arrest on August 15, 2005;

l. Respondents Carol Engel, Hennepin County Probation, Count of Hennepin

and Minnesota Department of Corrections maliciously prosecuted petitioner by filing a complaint against him on February 27, 2006;

m. Respondents Carol Engel, Hennepin County Probation, Count of Hennepin and Minnesota Department of Corrections violated his right to procedural due process by faxing a copy of an interstate compact transfer application petitioner signed on May 26, 2005 to the Monroe County Sheriff's Department on March 6, 2006;

n. Respondents Monroe County District Attorney Office and County of Monroe violated his rights by instituting an unconstitutional policy of accepting extradition waivers and denying probationers extradition hearings without first verifying whether the waivers were validly executed; and

o. Petitioner's right of access to the courts was violated because his revocation hearing was postponed from March 8, 2006 to March 15, 2006;

2. Petitioner's state law claims are DISMISSED without prejudice to his renewing them in state court; and

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

Entered this 16th day of June, 2006.

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