

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

JOSE GREGORIO CORPUS,

Plaintiff,

v.

FRANK LETTEMBERGER,

Defendant.

ORDER

06-C-274-C

Plaintiff Jose Gregorio Corpus is a prisoner at the New Lisbon Correctional Institution in New Lisbon, Wisconsin. He has submitted a proposed complaint under 42 U.S.C. § 1983 against defendant Frank Lettemberger and has paid the \$350 filing fee. Nevertheless, because he is a prisoner, he is subject to the 1996 Prison Litigation Reform Act. Under the act, plaintiff cannot proceed with this action unless the court grants him permission to proceed after screening his complaint pursuant to 28 U.S.C. § 1915A.

Although plaintiff's complaint is difficult to understand, it appears that plaintiff is alleging that his state court conviction for possession of marijuana with intent to deliver was obtained illegally because his plea was involuntary and he did not understand the plea proceeding because it was not translated to Spanish. In addition, it appears that plaintiff

is challenging the legality of his sentence on the ground that it was based on inaccurate information from a confidential informant.

DISCUSSION

Although plaintiff has named his court-appointed lawyer as a defendant in this action, he is seeking from this court release from confinement, his “staf back and [his] wife.” (Plaintiff alleges in his complaint that his wife was deported after serving a year in prison for her role in the events that form the basis for plaintiff’s conviction. I presume certain of plaintiff’s property also was confiscated as having been obtained with drug money.)

As noted above, plaintiff filed his complaint under 42 U.S.C. § 1983. However, a petition for a writ of habeas corpus under 28 U.S.C. § 2254 "is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release." Heck v. Humphrey, 512 U.S. 477, 481 (1994) (citing Preiser v. Rodriguez, 411 U.S. 475, 488-90 (1973)). The Court of Appeals for the Seventh Circuit has held that "when a plaintiff files a § 1983 action that cannot be resolved without inquiring into the validity of confinement, the court should dismiss the suit without prejudice" rather than convert it into a petition for habeas corpus under § 2254. Copus v. City of Edgerton, 96 F.3d 1038, 1039 (7th Cir. 1996) (citing Heck, 512 U.S. at 477). Accordingly, plaintiff cannot obtain the relief he seeks in this action. If he wishes to pursue his claim that his

conviction and sentence were unlawfully obtained, he will have to do so in a petition for a writ of habeas corpus after he has exhausted all the state court remedies available to him. 28 U.S.C. § 2254. Forms for filing a habeas corpus action may be obtained from the clerk of court upon request.

ORDER

IT IS ORDERED that

1. This action is DISMISSED pursuant to 28 U.S.C. § 1915A because the claim in the complaint is not cognizable in a civil action pursuant to 42 U.S.C. § 1983.
2. The clerk of court is directed to enter judgment for defendant and close this case.
- 3 A strike will not be recorded against plaintiff in accordance with 28 U.S.C. § 1915(g), because dismissal of an action for failure to use the proper avenue for relief is not a ground listed in § 1915(g) for recording a strike.

Entered this 19th day of May, 2006.

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