

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

ROBERT D. McGRATH,

Plaintiff,

ORDER

v.

06-C-343-C

LENARD WELLS and
LAURA MOFFIT,

Defendants.

Plaintiff Robert D. McGrath, a prisoner at the Oakhill Correctional Institution in Oregon, Wisconsin, has submitted a proposed complaint. He 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.

Plaintiff suggests that he should not be subject to the PLRA because “in the next few days or so [he] should be released.” I note that the subject of plaintiff’s complaint is his alleged illegal custody. If plaintiff had waited until his release from prison to file his complaint, he is right, the act would not apply. However, he chose to submit his complaint

while he is still incarcerated. The act applies to any prisoner who files a civil action while he is in prison. The term “prisoner” is defined as “any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.” 28 U.S.C. § 1915A(c). The act does not except persons who claim to be in illegal custody.

Accordingly, IT IS ORDERED that plaintiff’s complaint is taken under advisement. As soon as the court’s calendar permits, plaintiff’s complaint will be screened pursuant to 28 U.S.C. § 1915A to determine whether the case must be dismissed either because the complaint is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. Plaintiff will be notified promptly when such a decision has been made. In the meantime, if plaintiff needs to communicate with the court about his case, he should be sure to write the case number shown above on his communication.

Entered this 30th day of June, 2006.

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