

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

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RONALD WILLIAMS,

Petitioner,

v.

TONY CASE and the  
FEDERAL BUREAU OF PRISONS,

Respondents.  
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ORDER

06-C-599-C

This is a proposed civil action for monetary and injunctive relief brought under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Petitioner Ronald Williams, a prisoner, alleges that respondents Tony Case and the Federal Bureau of Prisons prevented him from earning more than \$5.25 a month, in violation of the due process clause of the Fifth Amendment.

In an order dated October 20, 2006, I concluded that petitioner qualified to proceed in forma pauperis. I ordered petitioner to make an initial partial payment of \$4.85, which the court received from an Audrey Mason on November 8, 2006. (Subsequently, the court received a second \$4.85 check from the financial office at the Federal Correctional

Institution in Oxford, Wisconsin, where petitioner is confined. The second payment has been credited toward petitioner's remaining filing fee obligation.) However, under the 1996 Prison Reform Litigation Act, the court is required to screen prisoner complaints and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or seek money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §1915(e)(2)(B).

Petitioner's claim will be dismissed as legally frivolous. Petitioner has no legal entitlement to receive compensation for work he performs in prison.

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). In his complaint, petitioner fairly alleges the following facts.

#### ALLEGATIONS OF FACT

Petitioner Ronald Williams is a prisoner at the Federal Correctional Institution in Oxford, Wisconsin. Between June 2005 and August 2006, petitioner received from his work supervisor monthly payroll sheets to sign so that petitioner could be paid an amount that exceeded \$5.25.

Respondent Tony Case is an employee of the Federal Bureau of Prisons. It is his job to insure that petitioner's pay is properly credited to petitioner's account. Instead,

respondent Case “took, confiscated and or stole” from petitioner any amount that he earned over \$5.25, without providing petitioner with a hearing.

Respondent Federal Bureau of Prisons “exercises a policy and or custom that fails to provide a hearing for [petitioner] and similarly situated prisoners on Inmate Financial Responsibility Program Refusal Status, before confiscating prisoner earned work funds—every month—exceeding \$5.25 and not putting the exceeded funds toward the [petitioner’s] and similarly situated prisoners’ prison accounts or court ordered financial obligation.”

## DISCUSSION

It is clear from petitioner’s complaint that he believes he is entitled to more than the \$5.25 a month that he currently receives as compensation for working in the prison, but unfortunately for petitioner, there is no legal basis for that belief. Petitioner alleges that respondent Case “stole,” “took” or “confiscated” his earnings, but his other allegations show that the source of his complaint is that he and other prisoners have been placed on “Inmate Financial Responsibility Program Refusal Status.”

The Inmate Financial Responsibility Program is governed by 28 C.F.R. §§ 545.10, 545.11 and BOP Program Statement 5380.08. It is designed to “assist the inmate in developing a financial plan for meeting” his financial obligations, including restitution, fines

and court fees. BOP Program Statement 5380.08, at 1. A prisoner who refuses to participate in the program, as petitioner apparently has done, suffers a number of consequences. One of these is that a prisoner “will not receive performance pay above the maintenance pay level.” 28 C.F.R. § 545.11. Maintenance pay is \$5.25 a month. Washington v. Reno, 35 F.3d 1093, 10098 n.6 (6th Cir. 1994). Thus, it is not that anyone “stole” petitioner’s pay; it is that he never *received* more than maintenance pay. Petitioner’s characterization of the operation of the program statement as “stealing” is a legal conclusion that I need not accept as true. Vaden v. Village of Maywood, 809 F.2d 361, 363 (7th Cir. 1987).

Distilled, petitioner’s claim is that the due process clause required respondents to provide him with a hearing before determining that he could not earn more than \$5.25 a month. Petitioner’s claim against the Bureau of Prisons is barred by the doctrine of sovereign immunity; a federal agency cannot be sued for money damages under the Constitution. Correctional Services Corp. v. Malesko, 534 U.S. 61, 72 (2001). Petitioner’s claim against respondent Case fails as well. Prisoners are not entitled under the Constitution to be paid *at all* for the work they perform for the government. Vaskike v. Peters, 974 F.2d 806, 809-10 (7th Cir. 1992). Thus, it follows that they are not entitled to a particular rate of pay. Further, because petitioner had not yet received additional earnings, he cannot claim

he was deprived of property in violation of the due process clause.

ORDER

IT IS ORDERED that

1. Petitioner Ronald Williams' claim that respondents Federal Bureau of Prisons and Tony Case violated his right to due process by failing to provide him with a hearing before limiting his pay to \$5.25 a month is DISMISSED as legally frivolous.

2. The unpaid balance of petitioner's filing fee is \$340.30; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2)

3. A strike will be recorded against petitioner, as required by 28 U.S.C. § 1915(g).

Entered this 27th day of November, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge