

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

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ANDRE WINGO,

Petitioner,

v.

ORDER

MARK KLUCK, CHAD FREY,  
and PEG KENDRIGAN,

07-C-68-S

Respondents.

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Upon receipt of plaintiff's partial filing fee in the amount of \$1.22, the Court addresses the merits of plaintiff's complaint. According to 28 U.S.C. § 1915(b)(2), the institution's financial officer is authorized to deduct monthly payments from plaintiff's account until the \$350.00 filing fee is paid in full.

Although not completely clear it appears that plaintiff is alleging that the defendants maliciously prosecuted him for a parole revocation. He alleges that the proceeding was resolved in his favor.

Malicious prosecution is not a constitutional tort unless the state does not provide a remedy for malicious prosecution. Newsome v. McCabe, 256 F.3d 747, 750 (7<sup>th</sup> Cir. 2001). Wisconsin recognizes the tort of malicious prosecution. See Strid v. Converse, 111 Wis. 2d 418, 331 N.W. 2d 350 (1983). Accordingly, plaintiff has not stated a federal claim for malicious prosecution and his complaint must be dismissed.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

ORDER

IT IS ORDERED that plaintiff's complaint and all claims contained therein is DISMISSED without prejudice for failure to state a claim under federal law.

IT IS FURTHER ORDERED that judgment be entered DISMISSING plaintiff's complaint and all claims contained therein without prejudice.

Entered this 16<sup>th</sup> day of February, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge