

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

STEVEN ALAN MAGRITZ,

Petitioner,

v.

JAMES E. DOYLE,
C. WILLIAM FOUST,
MATTHEW J. FRANK,
EMILY DAVIDSON and
CHRIS KAMIN,

Respondents.

OPINION and ORDER

07-C-350-C

Petitioner Steven Magritz is currently on parole supervision after spending five years in prison for filing false liens against 37 different individuals. In this civil case brought pursuant to 42 U.S.C. § 1983, petitioner contends that respondents violated his constitutional right of access to the courts by imposing, as a condition of parole, the requirement that he obtain the approval of his supervising parole agent before filing any legal documents or initiating any lawsuits. Petitioner 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.

Because his challenge to his parole condition must be raised in a habeas petition before it may be brought under § 1983, petitioner's request for leave to proceed in forma pauperis will be denied. I will dismiss petitioner's complaint without prejudice to his refiling the action as a petition for a writ of habeas corpus after he has exhausted his remedies in state court.

From petitioner's complaint and from court records available publicly through Wisconsin's Circuit Court Access Program, available at <http://wcca.wicourts.gov/index.xml>, I draw the following allegations of fact.

FACTUAL ALLEGATIONS

A. Parties

Petitioner Steven Magritz is a former Wisconsin state prisoner. Presently, he is under the supervision of the Wisconsin Department of Corrections.

Respondent James E. Doyle is Governor of the state of Wisconsin.

Respondent C. William Foust is a judge in the Circuit Court for Dane County, Wisconsin.

Respondent Matthew J. Frank is Secretary of the Wisconsin Department of Corrections.

Respondent Emily Davidson is a supervisor with the Department of Corrections's Division of Community Corrections.

Respondent Chris Kamin is petitioner's community corrections agent.

B. Conditions of Release

On January 5, 2002, following a jury trial, petitioner was found guilty of seven counts of "criminal slander of title." (Apparently, the jury found that petitioner filed "false UCC statements" against 37 different individuals, placing wrongful liens on the individuals' property.) On January 17, 2003, respondent Foust sentenced petitioner to five years' prison to be followed by a term of 18 months' supervised release. As a condition of petitioner's release, respondent Foust ordered that before petitioner could file any legal documents with any court, petitioner was required to show the documents to his supervising community corrections agent.

Petitioner served his prison term and is now in the community under respondent Kamin's supervision. Petitioner believes that respondent Doyle and other unidentified state officials have wronged him in myriad ways, by engaging in general malfeasance against state taxpayers and by wrongly confiscating petitioner's property. Petitioner wants to file lawsuits regarding these alleged wrongs, but respondents Davidson and Foust have threatened to reincarcerate him if he files any lawsuits without their permission.

DISCUSSION

In this action, petitioner seeks an order declaring unconstitutional the release condition that limits his right to file lawsuits without the preapproval of his supervising community corrections agent. Although petitioner has styled his lawsuit as a civil action under 42 U.S.C. § 1983, he may not proceed under that statute because he has not first sought and obtained relief through a petition for a writ of habeas corpus under 28 U.S.C. § 2254.

Section 2254 provides a remedy to persons contending that they are “in custody” in violation of the Constitution; § 1983 authorizes civil actions for deprivations of constitutional rights. Although the potential exists for a substantial overlap between the two statutes, the Supreme Court has held on multiple occasions that when a person can obtain relief for a violation of federal law through a petition for a writ of habeas corpus, he may not bring a claim under § 1983 until he has prevailed under § 2254. E.g., Preiser v. Rodriguez, 411 U.S. 475 (1973).

Although petitioner is challenging only the restriction that requires him to obtain his agent’s approval before filing lawsuits and not the validity of his underlying conviction, he is required nonetheless to pursue relief through a petition for a writ of habeas corpus. Because a parolee’s confinement is defined not by his placement in a prison but by various

lesser restrictions on his liberty, a challenge to even one condition of parole is, according to the court of appeals, a challenge to the parolee's custody per se. Williams v. Wisconsin, 336 F.3d 576, 579 (7th Cir. 2003) ("For parolees . . . the 'conditions' of parole are the confinement. . . . It is because of these restrictions that parolees remain 'in custody' on their unexpired sentences and thus may initiate a collateral attack while on parole."). Accordingly, if petitioner wishes to challenge the condition of his supervised release, he must do so by first exhausting his available state court remedies and then by filing a habeas petition. Id. at 580. For now, however, his request to proceed in forma pauperis will be denied and his complaint dismissed without prejudice.

ORDER

IT IS ORDERED that petitioner Steven Magritz's request to proceed in forma pauperis is DENIED and the case DISMISSED without prejudice to petitioner's refileing it as a petition for a writ of habeas corpus after exhausting his state court remedies.

Entered this 12th day of July, 2007.

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