

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

DANIEL Z. MALDONADO

Petitioner,

v.

WISCONSIN DEPARTMENT
OF CORRECTIONS,

Respondent.

ORDER

07-cv-673-bbc

This is a proposed civil action for injunctive and monetary relief filed by plaintiff Daniel Z. Maldonado, an inmate at the Sauk County Jail. In an order dated January 28, 2008, I reviewed petitioner Daniel Z. Maldonado's complaint and dismissed it for failure to comply with Fed. R. Civ. P. 8. I gave petitioner until February 11, 2008 in which to submit a proposed amended complaint that conforms to the requirements of Fed. R. Civ. P. 8. Petitioner now has filed a proposed amended complaint that does not appear to violate Rule 8. Therefore, I will screen it as I am required to do by 28 U.S.C. § 1915(e)(2).

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). However, if the

litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2).

In his complaint, petitioner alleges the following facts.

FACTS

Petitioner Daniel Z. Maldonado is an inmate at the Sauk County Jail. Between 2006 and 2007, petitioner was on his last year of a five-year probation sentence.

Respondent Wisconsin Department of Corrections is a state department based in Madison.

Between 2006 and 2007, petitioner was enrolled in Madison Area Technical College and was pursuing the study of journalism. Petitioner engaged in television broadcasting on WYOU Community Television - Cable Channel 4, performing two one-hour news programs.

On or about November 20, 2006, respondent ordered petitioner to cease and desist his television broadcasting activities.

On or about January 15, 2007, petitioner was forced to withdraw from Madison Area

Technical College, apparently at the behest of respondent. At the time, he had completed two semesters of schooling.

On or about August 29, 2007, petitioner's probation agent, Christopher S. Nolet, made false statements in a revocation summary and later made false statements under oath to a hearing examiner at petitioner's revocation hearing. The falsified facts were prejudicial to petitioner.

On September 20, 2007, petitioner received notice that his withdrawal from Madison Area Technical College caused the college to have to repay \$1,677.56 of petitioner's Stafford Loan Payments on his behalf. Now, petitioner is required to pay that amount to Madison Area Technical College before he can return to college as a full-time student.

Petitioner's sentence did not prohibit petitioner from participating in activities related to television broadcasting or other forms of journalism or attend college. In addition, the rules of supervision that petitioner signed did not include any provision by which petitioner acknowledged waiving his constitutional rights.

OPINION

Petitioner alleges that his rights under the First and Fourteenth Amendments have been violated. However, he has failed to name a respondent who may be sued under 42 U.S.C. § 1983. The Wisconsin Department of Corrections is a state agency; a state agency

is not a “person” within the meaning of 42 U.S.C. § 1983 and thus cannot be sued under that statute. Will v. Michigan Department of State Police, 491 U.S. 58 (1989); Ryan v. Illinois Department of Children and Family Services, 185 F.3d 751, 758 (7th Cir. 1999). It is of no consequence that petitioner has asked for injunctive relief. If a petitioner wishes to obtain injunctive relief, he may sue a public official in his or her official capacity. Powers v. Summer, 226 F.3d 815, 819 (7th Cir. 2000). Therefore, petitioner has failed to state a claim upon which relief can be granted and leave to proceed on his claims will be denied.

Even if petitioner had named “persons” suable under 42 U.S.C. § 1983, his proposed amended complaint faces other problems. First, it is not clear from petitioner’s complaint who was involved in ordering him to cease and desist television broadcasting activities or who forced him to withdraw from Madison Area Technical college. Although it is possible that petitioner believes that his probation officer was responsible for directing petitioner to cease broadcasting and withdraw from college, petitioner’s complaint does not make this clear. In the order dismissing petitioner’s complaint for failure to conform to the requirements of Fed. R. Civ. P. 8, I explained that petitioner had failed to “give respondents . . . a clear idea what it is they are alleged to have done to violate petitioner’s constitutional rights.” Order, dkt. #8, at 2-3 (January 28, 2008). Petitioner’s allegation that he was “forced by the Department” does not identify *who* in the department acted.

Next, it is apparent from the complaint that petitioner was ordered to cease and desist

television broadcasting activities and forced to withdraw from college pursuant to conditions of his probation, written or unwritten. Likewise, Nolet's allegedly false statements were made during a procedure by which petitioner's probation was revoked. Causes of action that question either conditions of probation or necessarily imply the invalidity of a probation revocation cannot be addressed under § 1983 unless the petitioner first succeeds in a habeas corpus proceeding challenging the probation conditions or revocation proceedings. Heck v. Humphrey, 512 U.S. 477, 487 (1994); Spencer v. Kemna, 523 U.S. 1, 17 (1998) (application of Heck to parole revocation hearing); Williams v. Wisconsin, 336 F.3d 576, 579 -580 (7th Cir. 2003) (quoting Drollinger v. Milligan, 552 F.2d 1220 (7th Cir. 1977)) (conditions of parole define perimeters of confinement and therefore challenge to restrictions imposed by parole should be brought as writ of habeas corpus, not under § 1983). Because petitioner has not established the invalidity of either his probation or his probation revocation by showing that he succeeded in a habeas corpus proceeding challenging the conditions or revocation proceedings, he could not seek relief under § 1983 even if he had properly named defendants and described their actions.

ORDER

IT IS ORDERED that:

1. Petitioner Daniel Z. Maldonado's request for leave to proceed in forma pauperis on

his claim that respondent Wisconsin Department of Corrections violated his First and Fourteenth Amendment rights is DENIED and this case is DISMISSED with prejudice for petitioner's failure to state a claim upon which relief may be granted;

2. The unpaid balance of petitioner's filing fee is \$281.83; 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 pursuant to § 1915(g); and

4. The clerk of court is directed to close the file.

Entered this 6th day of March, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge