

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

JAMES EDWARD GRANT,

Petitioner,

v.

AGENT DANIEL ROBINSON,
MPD BENISH, TIM HAMMOND,
DCTF JOHN DOE and MPD JOHN DOE,

Respondents.

OPINION and ORDER

08-cv-689-slc¹

Petitioner James Edward Grant has brought this lawsuit pursuant to 42 U.S.C. § 1983, alleging that respondents Daniel Robinson, MPD Benish, Tim Hammond, DCTF John Doe and MPD John Doe violated his constitutional rights by arresting him and putting him in jail and threatening him. Petitioner has requested leave to proceed in forma pauperis and has paid the initial partial filing fee. (Although petitioner's filing fee came in after the December 26, 2008 deadline he was given for submitting the fee, I will reopen the case and take his request for leave to proceed in forma pauperis under advisement.)

Because petitioner is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if petitioner has had three or more lawsuits or appeals

¹Because Judge Shabaz is on a medical leave of absence from the court for an indeterminate period, the court is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker. For the purpose of issuing this order only, I am assuming jurisdiction over the case.

dismissed for lack of legal merit or if his complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a respondent who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2). However, petitioner is a pro se litigant, which means that his complaint will be construed liberally as it is reviewed for these defects. Haines v. Kerner, 404 U.S. 519, 521 (1972).

Petitioner has two claims, neither of which may proceed. First, petitioner alleges that respondents Robinson, Benish, MPD John Doe and DCTF John Doe violated his constitutional rights by arresting him after discovering him while looking for another person and by holding him at the Dane County jail after that arrest. According to petitioner, he has been at the jail since the time of his arrest “facing probation revocation.” It is unclear why petitioner mentions this point. It is possible that petitioner is alleging that he was wrongfully arrested and that this act has put him at risk of revocation. In that case, his claim is not ripe because the only constitutional injury in such a setting is a violation of due process during the revocation proceedings, which have not yet concluded. Assuming he is awaiting a revocation hearing, to the extent that petitioner is concerned that he was wrongfully arrested, he must address that issue in the state revocation proceedings; this court cannot interfere. Sarlund v. Anderson, 205 F.3d 973, 975 (7th Cir. 2000) (claims that threaten to “derail an ongoing probation revocation proceeding” are barred as conflicting with spirit of Younger doctrine) (citing Younger v. Harris, 401 U.S. 37 (1971)).

What also may be likely is that petitioner is not denying that there are independent grounds for his revocation, but is objecting to the fact that defendants' allegedly wrongful coincidental arrest is the only reason they caught him when they did. Petitioner does not have a constitutional right to be free from coincidental discovery of his whereabouts by police or his probation officer. Because petitioner's allegations do not state any viable claim against defendants, petitioner will be denied leave to proceed on his claim against respondents Robinson, Benish, MPD John Doe and DCTF John Doe.

Next, petitioner contends that respondent Hammond violated his constitutional rights by telling him in a threatening manner that he would "see [him] later" after petitioner attempted to warn another inmate about his rights relating to DNA testing. Such a threat does not state a claim under the Constitution. Martin v. Sargent, 780 F.2d 1334 (8th Cir.1985) (inmate's rights not violated by threat that he would have "bad time" if he refused to cut his hair and shave his beard); see also DeWalt v. Carter, 224 F.3d 607, 612 (7th Cir. 2000) (verbal abuse of prisoners by prison staff does not state claim under Constitution); Oltarzewski v. Ruggiero, 830 F.2d 136 (9th Cir. 1987) (prison official's use of vulgar language did not violate inmate's civil rights). Therefore, petitioner will be denied leave to proceed against respondent Hammond as well.

ORDER

IT IS ORDERED that:

1. Petitioner James Edward Grant's request for leave to proceed in forma pauperis against respondents Daniel Robinson, MPD Benish, Tim Hammond, DCTF John Doe and MPD John Doe is DENIED and this case is DISMISSED with prejudice for petitioner's failure to state a claim upon which relief may be granted;

2. Petitioner is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at Dodge Correctional Institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

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 9th day of January, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge