

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

ERIC GUNTHER SHIBLES,

Petitioner,

v.

RICK RAEMISCH,
SHEILA REIFF,
ET AL,

Respondents.

ORDER

09-cv-158-slc¹

This is a proposed civil action brought by pro se litigant Eric Shibles, who 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. Petitioner has supported his request with an affidavit

¹Because there is presently a judgeship vacancy in the Western District of Wisconsin, the court is assigning 50% of its caseload automatically to Magistrate Judge Stephen Crocker until the vacancy is filled. It is this court's expectation that the parties in a case assigned to the magistrate judge will give deliberate thought to providing consent for the magistrate judge to preside over all aspects of their case, so as to insure that all cases filed in the district receive the attention they deserve in a timely manner. At this early date, consents to the magistrate judge's jurisdiction have not yet been filed by all the parties to this action. Therefore, for the purpose of issuing this order only, I am assuming jurisdiction over the case.

of indigency. From the affidavit, I conclude that petitioner is unable to prepay the fees and costs of instituting this lawsuit.

The next step is determining whether petitioner's proposed action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a respondent who is immune from such relief. 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).

I understand petitioner to be claiming that respondents Rick Raemisch and Sheila Reiff violated his rights under the ex post facto clause when they deducted money from his state tax refund to pay debts he owed to the Wisconsin Department of Corrections and the Walworth County Clerk of Courts. Having reviewed petitioner's complaint, I conclude that his allegations do not raise a claim under § 1983.

ALLEGATIONS OF FACT

Petitioner Eric G. Shibles is an adult resident of Oshkosh, Wisconsin. Respondent Rick Raemisch is Secretary of the Wisconsin Department of Corrections. Respondent Sheila Reiff is employed by the Walworth County Clerk of Courts.

On March 6, 2009, petitioner was notified that he had been allowed a state tax refund of \$836.00 and that \$826.00 of it has been applied to debts he owed to the

Walworth County Clerk of Courts and the Wisconsin Department of Corrections. A portion of the debt, \$507.70, was part of a judgment in a state case. Petitioner believes it is not fair that he has to pay this prior debt “retroactively” because, by comparison, he would not be able to apply the current truth-in-sentencing laws retroactively to his prior sentence and sue the State of Wisconsin for false imprisonment. (Apparently petitioner believes that if he had been sentenced under the current law, he would have received less time.) After several telephone conversations, petitioner determined that the policies of Winnebago County and Walworth County regarding setoff of all future stimulus funds to pay past debts were contradictory. Petitioner seeks to have the offset declared void.

DISCUSSION

The ex post facto clause “forbids the application of any new punitive measure to a crime already consummated” and has been interpreted to pertain exclusively to penal statutes. Kansas v. Hendricks, 521 U.S. 346, 370-71 (1997) (citations omitted). Also, “an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law,” Bouie v. City of Columbia, 378 U.S. 347, 353 (1964),

The ex post facto clause does not forbid the collection of past debts from a state tax refund. This collection is not a “new punitive measure” to a past crime. Although petitioner may be alleging that the debts were a consequence of his state criminal convictions, he has

not alleged that a penal statute has been changed. Petitioner's position appears to be that the state cannot collect a prior debt now that he has received a state tax refund. However, this collection by the state does not violate the ex post facto clause of the constitution. I do not understand petitioner to be raising any other claims. Therefore, I will deny petitioner's request to proceed in forma pauperis and dismiss his complaint with prejudice.

ORDER

IT IS ORDERED that petitioner Eric Shibles's request for leave to proceed in forma pauperis is DENIED and this case is DISMISSED with prejudice for failure to state a claim upon which relief may be granted. The clerk of court is directed to close this file.

Entered this 6th day of April, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge