

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

FRANK E. RATCLIFF,

Plaintiff,

v.

WILLIAM GROSSHANS, QUALA CHAMPAGNE,
DEFENDANT DOE, ART THURMER,
KERRI SPAETH and WILLIAM LAZAR,

Defendants.

ORDER

10-cv-514-slc¹

In this civil action for monetary and injunctive relief, plaintiff Frank Ratcliff contends that defendants William Grosshans, Quala Champagne, Art Thurmer, Kerri Spaeth, William Lazar and a Jane Doe are violating his constitutional rights by subjecting him to probation rules that govern those convicted of a sex offense.

Because plaintiff is a prisoner, I am required by the 1996 Prison Litigation Reform Act to screen his complaint and dismiss any portion that 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. § 1915A. In addressing any pro se litigant's

¹ For the purpose of issuing this order, I am assuming jurisdiction over the case.

complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972).

After reviewing the complaint, I conclude that plaintiff is challenging the conditions of his probation. Such a challenge cannot be brought under 42 U.S.C. § 1983. Therefore, his case will be dismissed without prejudice because he must bring these claims as a petition for a writ of habeas corpus, 28 U.S.C. § 2254, after he has exhausted his remedies in state court.

In his complaint and supplement, dkt. #6, plaintiff alleges the following facts.

ALLEGATIONS OF FACT

Plaintiff Frank Ratcliff is incarcerated at the Dane County jail in Madison, Wisconsin. Defendants are current or former employees of the Wisconsin Department of Corrections. Defendant William Grosshans is the former administrator, Quala Champagne is the present administrator, Art Thurmer is regional chief, William Lazar is a correctional field supervisor and Kerri Spaeth and Jane Doe are employees.

In 1988, plaintiff was convicted of fourth-degree sexual assault and served a nine-month sentence. After his release, plaintiff was arrested on a number of occasions and served sentences for theft, receiving stolen property and forgery. Each time he was released on parole, “standard” parole terms applied.

In 2002, defendant Grosshans issued a directive stating that any offender with a

history of a sex crime would be supervised as a sex offender, as defined by Grosshans in the directive. In 2009, defendant Jane Doe supervised plaintiff while he was confined at the Winnebago Correctional Drug Abuse Center. He was eventually transferred to the Columbia Correctional Institution and was scheduled for parole. His social worker told him that he would be under defendant Kerri Spaeth's supervision and would be subject to standard rules of supervision as well as sex offender rules, according to Grosshans's 2002 directive. Plaintiff refused to sign the sex offender rules and filed a number of complaints, using the Department of Corrections' complaint system. Defendants Spaeth, Lazar, Thurmer and Champagne denied plaintiff's complaints.

Plaintiff was released on supervision in February 2010. His rules of supervision prohibited him from engaging in a romantic or sexual relationship, seeking employment or attending church without first obtaining defendant Spaeth's approval. In addition, when plaintiff attended church, he had to be accompanied by two chaperones and had to inform the church leaders about his conviction for fourth-degree sexual assault.

Plaintiff was arrested on May 30, 2010 and his parole was revoked. On her revocation summary, defendant Spaeth listed several parole violations. She reported that plaintiff had absconded from supervision, resided at an unapproved residence, established a romantic relationship, left Dane County, accepted employment without agent approval, consumed alcohol, provided false information to the police and resisted an officer.

DISCUSSION

Plaintiff contends that having to submit to probation rules that govern those convicted of a sex offense violates his rights to due process under the Fourteenth Amendment to be free from cruel and unusual punishment under the Eighth Amendment and to be free of ex post facto laws. I understand plaintiff to be attacking the conditions of his probation, specifically, the conditions that treat him as a sex offender on probation. Causes of action that question either conditions of probation or necessarily imply the invalidity of a probation revocation cannot be addressed under 42 U.S.C. § 1983 unless the plaintiff succeeds first in a habeas corpus proceeding challenging the probation conditions or revocation proceedings. Williams v. Wisconsin, 336 F.3d 576, 579-580 (7th Cir. 2003) (conditions of parole define perimeters of confinement and therefore challenge to restrictions imposed by parole should be brought as writ of habeas corpus, not as § 1983 action (citing Drollinger v. Milligan, 552 F.2d 1220 (7th Cir. 1977))). Because plaintiff has not established the invalidity of either the conditions of his probation or his probation revocation by showing that he succeeded in a habeas corpus proceeding challenging the conditions or the revocation proceedings, he cannot seek relief under § 1983.

This court cannot convert this action into one for habeas corpus on its own motion. The Court of Appeals for the Seventh Circuit has held that “[w]hen a plaintiff files a § 1983 action that cannot be resolved without inquiring into the validity of confinement, the court

should dismiss the suit without prejudice” rather than convert it into a petition for habeas corpus. Copus v. City of Edgerton, 96 F.3d 1038, 1039 (7th Cir. 1996) (citing Heck v. Humphrey, 512 U.S. 477 (1994)). Therefore, plaintiff’s claims will be dismissed without prejudice. Plaintiff may raise his claims in a petition for a writ of habeas corpus but he should be aware that such a petition would have to be dismissed immediately unless he can show that he has presented his claims to the Wisconsin courts and has been denied relief at the trial and appellate levels, 28 U.S.C. § 2254(b)(1)(A), or that there is no state corrective process available to him, § 2254(b)(1)(B).

ORDER

IT IS ORDERED that

1. Plaintiff Frank Ratcliff is DENIED leave to proceed on his claims that his conditions of probation violated his rights to due process under the Fourteenth Amendment, his right to be free from cruel and unusual punishment under the Eighth Amendment and his right to be free from ex post facto laws.
2. Plaintiff’s claims are DISMISSED without prejudice to his raising his claims in a petition for a writ of habeas corpus.
3. Plaintiff 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 the

Dane County Jail of that institution's obligation to deduct payments from plaintiff's account until the filing fee has been paid in full.

Entered this 26th day of October, 2010.

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