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

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KONG PHENG VUE,

OPINION AND ORDER

Plaintiff,

12-cv-83-bbc

v.

STATE OF WISCONSIN,

Defendant.

- -

Plaintiff Kong Pheng Vue, who is acting pro se, has filed a proposed second amended complaint. Dkt. #7. Plaintiff has paid his initial partial filing fee and the complaint is ready for screening. As I told plaintiff earlier, the court has an obligation to address his complaint liberally because he is proceeding pro se, Haines v. Kerner, 404 U.S. 519, 521 (1972), but it must dismiss his complaint if it is frivolous or malicious, fails to state a claim upon which relief may be granted or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. §1915(e)(2).

In orders entered April 3, 2011 and May 31, 2011, I dismissed plaintiff's proposed complaints because they failed to comply with Fed. R. Civ. P. 8, but gave him an opportunity to filed an amended proposed complaint. I told plaintiff to tell his full story, using short and plain statements. Unfortunately, plaintiff's proposed second amended complaint is less undertandable than his first efforts. After reviewing his proposed second amended complaint, I conclude that plaintiff has failed to state a claim upon which relief can

be granted.

In his proposed second amended complaint, plaintiff has alleged the following facts, which I have supplemented with facts from the public record and from documents he submitted with his prior complaints, in an effort to make the allegations comprehensible.

ALLEGATIONS OF FACT

On June 17, 2011, the state of Wisconsin charged plaintiff with strangulation, disorderly conduct and battery. State of Wisconsin v. Kong P Vue, Circuit Court for La Crosse County, case no. 2011CF345. After he entered a plea of not guilty, the state released him on a $1,000 bond. In addition, plaintiff was charged $804.

In the second amended complaint, plaintiff refers to the $804 as a "money judgment of justice sanctions" with no further explanation. However, in his initial complaint in this case, he submitted an invoice from the Justice Sanctions Program of the La Crosse County Human Services for $804 for services beginning June 16, 2011. Dkt. #1-4. In his complaint in the prior case relating to these same facts, plaintiff submitted a similar invoice and a document he signed entitled "Notification of Fees Through the La CrosseCounty Justice Sanctions Program." Kong Pheng Vue v. La Cross County Courthouse, No. 11-cv-713-bbc, dkt. #1-1, at 8-9. These documents demonstrate that on June 16, 2011, plaintiff agreed to pay the justice sanctions program $6 a day for electronic bail monitoring. I conclude that the $804 "justice sanctions" charge was for electronic monitoring during plaintiff's pretrial release.

Plaintiff's case was never brought to trial. The state voluntarily dismissed all charges against him on January 5, 2012. As a result of this criminal prosecution, plaintiff incurred $480 in attorney fees for his public defender.

OPINION

A. Eighth Amendment and Fourteenth Amendment

Plaintiff is understandably angry that he had to pay $1284 and incur the costs of a $1000 bond for a crime of which he believes he is innocent. Although criminal prosecutions often impose financial burdens on the accused, this is the unfortunate price of criminal justice system. I am aware of no federal or state laws that give defendants a right to restitution for these costs. (Plaintiff cites Wis. Stat. §775.05, which creates a claims board authorized to compensate persons who have been convicted and imprisoned for a crime of which they were innocent. This statute cannot form the basis of a federal claim. Even if it did, plaintiff was never convicted or imprisoned.)

The Constitution does impose some protections to limit the burden of a criminal prosecution. For instance, the Eighth Amendment provides that "[e]xcessive bail shall not be required," U.S. Const. amend. VII, and the Fourteenth Amendment provides that no state may "deprive a person of life, liberty or property without due process of law." U.S. Const. amend. XIV. However, plaintiff's second amended complaint does not state a claim under § 1983 for a violation of either of these constitutional provisions.

Plaintiff objects to his $1,000 bail bond but offers no facts to suggest this amount was

excessive in light of the circumstances of his arrest. In addition, plaintiff has not identified any specific constitutional problems with his bond hearing or with the Wisconsin statutory provisions governing pretrial release in criminal cases. Wis. Stat. §§ 969.001-969.14. Therefore, plaintiff has not stated a claim that the bail bond violated his constitutional rights.

Plaintiff also complains about the $804 he incurred for electronic monitoring. Electronic monitoring restricts the accused's liberty, and the fees for monitoring deprive the accused of property. In some circumstances, such fees might implicate the prohibition on "excessive bail" and the right not to be deprived of liberty or property without due process of law. United States v. Salerno, 481 U.S. 739, 746-47 (1987) (recognizing conditions on pretrial detention implicate due process clause and Eighth Amendment, but upholding Bail Reform Act against facial challenge).

However, if plaintiff is alleging that electronic monitoring or the fees for electronic monitoring are generally unconstitutional, his claim has no merit. Conditions for pretrial release are not punishments; they are regulatory measures designed to prevent danger to the community and assure the defendant's presence for trial, while at the same time respecting the accused's liberty. Id. Electronic monitoring and its fees are no different in this regard from bail bonds, curfews, drug tests or other conditions on pretrial release. United States v. Peeples, 630 F.3d 1136, 1139 (9th Cir. 2010) (rejecting facial and as-applied challenge to electronic monitoring as condition of bail under Adam Walsh Child Protection Act,18 U.S.C. § 3142(c)(1)); Schilb v. Kuebel, 404 U.S. 357, 370-71 (non-refundable

administrative fee for bail bond did not offend due process even if imposed equally on those ultimately convicted and acquitted). For a defendant who may otherwise be detained or required to post a higher bail bond, electronic monitoring is usually a welcome alternative.

Plaintiff's complaint offers no details about the specific conditions of his electronic monitoring or the legal procedures followed by La Crosse County that might supply the basis for a claim that electronic monitoring was unconstitutional as applied in his case. His only allegation in this regard is that the electronic monitoring fees were imposed without a jury trial, when he had not yet been found guilty. Necessarily, any form of pre-trial detention occurs without a jury trial and before the entry of judgment. Accordingly, plaintiff's allegations regarding the electronic monitoring fail to state a claim under the Eight Amendment or the due process clause.

B. Speedy Trial

Plaintiff also objects to the delay before his scheduled trial, which I will construe as alleging a violation of his Sixth Amendment right to a speedy trial. Barker v. Wingo, 407 U.S. 514 (1972). Plaintiff was arrested on June 16, 2011, so he experienced a delay of less than seven months.

The Supreme Court has adopted a balancing test for speedy trial cases that considers the "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." Barker v. Wingo, 407 U.S. 514, 530, (1972). However, a court need make no inquiry into the other factors unless the length of delay is "presumptively

prejudicial" given the nature of the crime. Id. "Simply to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay since, by definition, he cannot complain that the government has denied him a 'speedy' trial if it has, in fact, prosecuted his case with customary promptness." Doggett, 505 U.S. at 651-52.

In light of the significance of the strangulation charges against plaintiff, a delay of less then seven months is below the threshold of presumptively prejudicial delay for further inquiry into a speedy trial claim. Id. at 652 n. 1 ("Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year."); Owens v. Frank, 394 F.3d 490, 503 (7th Cir. 2005) (upholding as reasonable Wisconsin Court of Appeals decision finding delay of seven months not presumptively prejudicial); but see United States v. Valentine, 783 F.2d 1413, 1417 (9th Cir. 1986) (six-month delay for single count of firearms possession by convicted felon was "borderline case"). Strangulation is a Class H felony under Wisconsin law and six months falls within the guidelines for trial for felony cases set by the circuit court rules. La Crosse Co. Ct. Rule 301, http://www.wisbar.org/am/template.cfm?Section=La_Crosse_County1. Plaintiff has failed to state a claim for violation of his constitutional right to a speedy trial.

C. Defendant State of Wisconsin

In the prior order entered May 31, 2012, I told plaintiff that he cannot sue the state

of Wisconsin under 28 U.S.C. § 1983 and that he had to identify the specific individuals who violated his rights in his amended complaint and include their names in its caption. His proposed second amended complaint does not include a caption and does not identify any individuals. If his complaint did not fail on the grounds discussed, it would have to be dismissed on the ground that the state of Wisconsin is not a suable entity. Will v. Michigan Dept. of State Police, 491 U.S. 58, 66 (1989).

ORDER

IT IS ORDERED that Plaintiff Kong Pheng Vue's request for leave to proceed in forma pauperis in this action is DENIED and his case is DISMISSED WITH PREJUDICE.

Entered this 25th day of June, 2012.

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