

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

JAMES J. KAUFMAN,

Plaintiff,

v.

GARY H. HAMBLIN, KATHRYN ANDERSON,
KATHERINE NAGLE, DAVID L. WHITE,
EILEEN CLEAVER, DR. ROBERT DE YOUNG,
DANIELLE LA COST and AMY E. GLEISNER,,

Defendants.

ORDER

12-cv-87-bbc

In this lawsuit, plaintiff James Kaufman alleges that defendant prison officials violated his due process and equal protection rights by placing false information in his prison records and then failing to correct the false information when asked to do so by plaintiff. The information was used in Wis. Stat. Ch. 980 civil commitment proceedings against plaintiff and resulted in his being denied parole and a transfer to minimum security custody. In a July 2, 2012 order, I dismissed plaintiff's claims that his due process rights were violated when he was denied parole under Heck v. Humphrey, 512 U.S. 477 (1994), because a finding that prison officials deprived him of a protected liberty interest in mandatory parole would necessarily imply that the decision to continue his confinement was invalid. Also, I dismissed plaintiff's due process claim that false information was used to block his transfer to minimum security status because he has no liberty interest in minimum status. Finally,

I dismissed plaintiff's complaint under Fed. R. Civ. P. 8 to the extent he alleged that his due process rights were violated by having Ch. 980 proceedings initiated against him and to the extent he sought to bring any equal protection claims, because those claims were undeveloped. I gave plaintiff a short time to submit a proposed amended complaint providing more detail regarding these claims.

Plaintiff has not filed an amended complaint. Instead, he has filed a motion for reconsideration of the July 2 order, arguing that it was error to dismiss his due process claim regarding the denial of his parole. Also, he says that he does not wish to bring claims regarding Ch. 980 proceedings or his transfer to minimum security (he states that he "merely included those two scenarios to illustrate to the Court the other problems which are related to the false/erroneous information in his offender record"). Dkt. #11.

Plaintiff argues that Heck should not apply to his due process claim regarding his parole hearing because he does not seek automatic relief from custody. Rather, he is seeking only a new parole hearing "once the false information has been removed from his file" and that "[i]t is NOT certain that the Parole Board would release [him]; they could easily come up with a different reason for denying parole"

Originally, I understood plaintiff to be saying that the false information disqualified him from receiving *mandatory* parole; such allegations would necessarily imply that his continued confinement was invalid. E.g., Brown v. Hackbarth, 445 Fed. Appx. 865, 867 (7th Cir. 2011). Plaintiff's current assertion that expungement of the false information would not automatically grant him release may well be correct, but the implication of that

assertion is that his parole is not mandatory—rather, the parole board would be exercising discretion in making a determination at the new hearing. Plaintiff cannot sustain a due process claim under this scenario because he has no liberty interest in discretionary parole. Grennier v. Frank, 453 F.3d 442, 444 (7th Cir. 2006). Accordingly, I will deny his motion for reconsideration. Because plaintiff has chosen not to pursue any other claims in this case, the entire case will be dismissed.

ORDER

IT IS ORDERED that

1. Plaintiff James Kaufman's motion for reconsideration of the court's July 2, 2012 order in this case, dkt. #11, is DENIED.
2. This case is dismissed and the clerk of court is directed to enter judgment and close the case.

Entered this 19th day of September, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge