

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

MICHAEL E. FLOURNOY,

Plaintiff,

v.

OPINION & ORDER

14-cv-554-jdp

JOHN G. MCKENZIE,
UNITED STATES ATTORNEY OFFICE NDI-WD,
THOMAS G. BRUTON, MARY T. LINDBLOOM,
TERENCE JAMES HEATHERMAN,
NEAL C. GRUHN, WAYNE JACKOWSKI,
CRAIG SMITH, ADAM KING,
JOHN D. RICHARDSON, FREDERICK J. KAPALA,
JENNIFER TABORSKI, TINA M. CACCIATORE,
WINNEBAGO COUNTY SHERIFF'S OFFICE,
LARRY MARINO, DOMINIC ISPARRO,
ROBERT JUANEZ, DANIEL FREEDLUND,
JOSEPH BOOMER, BRAD KAISER, and
JULIE DODD,

Defendants.

Pro se prisoner Michael Flournoy has filed a proposed complaint under 42 U.S.C. § 1983 in which he alleges that defendants violated the full faith and credit clause of the Constitution while prosecuting him in federal court. Plaintiff seeks monetary damages for loss of work and missed family events, as well as punitive damages for what he alleges to have been willful and malicious conduct by defendants.

Plaintiff has made an initial partial payment of the filing fee under 28 U.S.C. § 1915(b)(1). The next step in this case is for the court to screen plaintiff's complaint and dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for monetary damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. In screening 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). After reviewing the complaint with this principle in mind, I conclude that it fails to state a claim upon which relief can be granted. I will therefore dismiss this case in its entirety.

ALLEGATIONS OF FACT

Plaintiff is currently a prisoner at FCI-Oxford, located in Wisconsin. He was convicted in the United States District Court for the Northern District of Illinois on one count of conspiring to possess cocaine with intent to distribute and one count of attempting to possess cocaine with intent to distribute. Plaintiff's direct appeal is currently pending before the Seventh Circuit. Defendants are officers or employees of the U.S. Attorney's Office for the Northern District of Illinois, the United States District Court for the Northern District of Illinois, the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms and Explosives, or the Winnebago County, Illinois, Sheriff's Office.

Plaintiff was apprehended on July 30, 2102, when he participated in a controlled drug buy with an undercover Winnebago County sheriff's deputy. The Illinois State's Attorney's Office initially brought charges against plaintiff, but then moved to dismiss them in favor of federal criminal charges. On July 31, 2012, the Illinois Circuit Court for the 17th Judicial Circuit granted the prosecutor's motion to dismiss. The same day, the U.S. Attorney brought federal charges against plaintiff.

Plaintiff has filed two lawsuits in this court related to his arrest and prosecution. In *Flourney v. Winnebago County Sheriff's Office*, No. 14-cv-528 (W.D. Wis. filed July 28, 2014) ([hereinafter the '528 case], plaintiff filed a proposed complaint alleging that his arrest and prosecution violated his constitutional rights.¹ In this case, plaintiff's complaint alleges that

¹ I have given plaintiff the opportunity to amend his complaint in the '528 case to articulate his basis for believing that the arresting officers lacked probable cause.

defendants failed to give full faith and credit to a state court's dismissal of criminal charges brought against him.

ANALYSIS

I understand plaintiff to allege that defendants violated the full faith and credit clause of Article IV of the Constitution, and 28 U.S.C. § 1738 by initiating federal criminal proceedings after a state court had dismissed charges of criminal conduct against him arising from the same events. *See Rosin v. Monken*, 599 F.3d 574, 575 (7th Cir. 2010) (plaintiff brought § 1983 claim alleging violations of the full faith and credit clause). Plaintiff appears to believe that the Illinois state court's dismissal of the charges against him operates as a final adjudication of all criminal charges, state or federal, relating to his involvement in the controlled buy on July 30, 2012. But this theory misunderstands the relationship between the state and federal criminal justice systems. Plaintiff has not stated a claim upon which relief can be granted.

The doctrine of "dual sovereignty" enables states and the federal government to enforce independently their respective criminal laws. The Supreme Court holds that "an act denounced as a crime by both national and state sovereignties is an offense against the peace and dignity of both and may be punished by each." *United States v. Lanza*, 260 U.S. 377, 382 (1922); *see also Heath v. Alabama*, 474 U.S. 82, 88 (1985) ("[W]hen the same act transgresses the laws of two sovereigns, it cannot be truly averred that the offender has been twice punished for the same offence; but only that by one act he has committed two offences, for each of which he is justly punishable.") (internal citations and quotation marks omitted). Thus, the fact that Illinois brought state criminal charges against plaintiff does not prevent the federal government from bringing charges as well, even if the federal charges relate to the same conduct or events. Indeed, the U.S. Attorney routinely charges defendants who were investigated, arrested, and even

prosecuted by state officials. What happened in plaintiff's case, as often happens once the U.S. Attorney decides to bring charges, is that the state prosecutor dropped plaintiff's state drug charges in favor of federal charges.

In this case, I understand plaintiff to argue that the state court's dismissal order had the effect of adjudging plaintiff not guilty of any criminal conduct that occurred on July 30. The state court's order does no such thing; it merely dismissed the charges against plaintiff because the state prosecutor moved to have them dismissed. Dkt. 5-2, at 1. Plaintiff was not adjudged "not guilty" of anything. But most important, the state court's dismissal of the *state* charges against plaintiff did not prevent the federal government from bringing *federal* charges. There is no set of facts that plaintiff could prove that would entitle him to the relief he seeks on a claim for violation of the full faith and credit clause.²

To the extent that plaintiff repeats the allegations that are at issue in the '528 case, I will deny him leave to proceed on those claims in this case. Plaintiff is already pursuing an action against the state defendants for unlawful arrest; he cannot bring the same case twice. Finally, I note that plaintiff's complaint alleges that defendants "[f]ailed to provide [him] with needed medical care while having knowledge that medical treatment was needed." Dkt. 1, at 4. But plaintiff does not mention this allegation again in his complaint, nor does he ever discuss what medical treatment he needed, sought, or was denied. I understand plaintiff's complaint to address only his state and federal prosecutions, and to repeat the claims he raises in the '528

² Even if plaintiff could state a claim, his complaint contains other fundamental defects that would prevent this case from continuing. Most, if not all, of the federal defendants are protected by absolute immunity from § 1983 suits for their roles in plaintiff's prosecution. *See Imbler v. Pachtman*, 424 U.S. 409, 430 (1976) (prosecutorial immunity); *Pierson v. Ray*, 386 U.S. 547, 554 (1967) (judicial immunity); *Snyder v. Nolen*, 380 F.3d 279, 287 (7th Cir. 2004) (immunity for court personnel). Moreover, as was true in the '528 case, it is doubtful that this court could exercise personal jurisdiction over defendants, or that venue is proper in this district.

case. I will therefore dismiss this entire action for failure to state a claim upon which relief can be granted.

ORDER

IT IS ORDERED that:

1. This case is DISMISSED with prejudice for failure to state a claim upon which relief can be granted.
2. The clerk of court is directed to close this case.

Entered January 26, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge