

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

JEROME ANTHONY THEUS,

Plaintiff,

v.

WILLIAM E. HANRAHAN,

Defendant.

OPINION AND ORDER

15-cv-7-bbc

Pro se prisoner Jerome Theus has filed a proposed complaint under 42 U.S.C. § 1983 in which he alleges that defendant William E. Hanrahan, a judge, acted inappropriately while presiding over plaintiff's criminal trial. Under 28 U.S.C. § 1915A, I must screen plaintiff's proposed 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. In this instance, plaintiff cannot proceed because defendant is absolutely immune from suit. Accordingly, his complaint will be dismissed and he will be assessed a strike under § 1915(g).

OPINION

Plaintiff alleges that defendant Judge Hanrahan sentenced him to prison for certain crimes. (Plaintiff does not say what they were.) He says that defendant called him a child

rapist on the record and instituted a no-contact order between plaintiff and his wife and children.

Plaintiff's complaint cannot proceed because his only named defendant is protected from suit under the doctrine of judicial immunity. Judges have absolute immunity for their judicial acts, which include presiding over trials and sentencing defendants. Pierson v. Ray, 386 U.S. 547, 553 (1967). Thus, even if defendant were incorrect or malicious in his statements or actions toward plaintiff during his trial and sentencing, he cannot be sued for damages. Id. See also Brandt v. Nielsen, No. 12-CV-385-WMC, 2013 WL 6834372, at *2 (W.D. Wis. Dec. 26, 2013) ("This immunity is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, which has an interest in a judiciary free to exercise its function without fear of harassment by unsatisfied litigants.").

Because plaintiff has filed a complaint for which there are no arguable grounds for relief, he will be assessed a strike under 28 U.S.C. § 1915(g). By suing a judge who is clearly immune from suit, plaintiff has failed to state a claim and has filed a frivolous suit under § 1915(g). Jones v. Bock, 549 U.S. 199, 215 (2007) ("A complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show the plaintiff is not entitled to relief."); Neitzke v. Williams, 490 U.S. 319, 327 (1989) ("Examples of [legally frivolous claims] are claims against which it is clear that the defendants are immune from suit.").

I note that plaintiff wants defendant to "look into [his] case." Plt.'s Cpt., dkt. #1, at 6. If plaintiff wishes to challenge his conviction or sentence, he may do so only in a petition for a writ of habeas corpus, which he may file after he has exhausted his arguments

for relief through all levels of the state court system. Heck v. Humphrey, 512 U.S. 477, 487 (1994). He cannot challenge the validity of his sentence in a civil action under § 1983. Id.

ORDER

IT IS ORDERED that

1. Plaintiff Jerome Anthony Theus is DENIED leave to proceed on his claims against defendant Judge William E. Hanaran and his complaint is DISMISSED as frivolous and for failure to state a claim upon which relief may be granted.

2. In accordance with 28 U.S.C. § 1915(g), plaintiff will be assessed a strike.

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). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fee has been paid in full.

4. The clerk of court is directed to enter judgment for defendant and close this case.

5. Because the case will be closed, plaintiff's motion, dkt. #13, for assistance in recruiting counsel, is DENIED as moot.

Entered this 2d day of April, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge