

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

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JOHNSON CARTER,

Plaintiff,

v.

CONNIE ELBE, DEREK DURANTE,  
KRISTY ZANDER and  
STATE OF WISCONSIN,

Defendants.

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OPINION & ORDER

16-cv-177-wmc

Plaintiff Johnson Carter filed this complaint pursuant to 42 U.S.C. § 1983, alleging that his status as a sex offender violates his constitutional and state law rights. The court has determined that Carter may proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915. Having filed a complaint, amended complaint, and a motion in which he seeks to substitute new defendants, the court has considered all of them together for purposes of screening under 28 U.S.C. § 1915A. Even construing his complaint leniently, Carter's complaint must be dismissed for failure to state a claim upon which relief may be granted.

ALLEGATIONS OF FACT<sup>1</sup>

Carter is currently incarcerated at the Marathon County Jail in Wausau, Wisconsin, but the facts comprising his complaint took place after he was released from incarceration at Jackson Correctional Institution ("JCI"). In addition to naming the State of Wisconsin as a defendant, Carter names individuals that have been involved in his probation following

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<sup>1</sup> In addressing any pro se litigant's complaint, the court must read the allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For the purpose of this order, the court assumes the facts above based on the allegations in Carter's amended complaint.

his release from JCI: Kathryn Meiers, a supervisor; and a woman named Valerie, who was involved in requiring him to report as a sex offender.

On July 30, 1993, Carter was convicted in Minnesota on sexual misconduct in the first degree, as well as other charges. Carter maintains that he completed his prison and probationary terms in January 1997 and January 1999, respectively. At some point, Carter moved from Minnesota to Wisconsin, where he was later incarcerated at JCI from March 2004 to September 2, 2014, for convictions for false imprisonment, domestic abuse, bail jumping, stalking and failure to register as a sex offender. One of the conditions of his sentence related to the false imprisonment charge was that he must register as a sexual offender, but it is not clear from the publicly available record why this condition was imposed at that time. *See State of Wisconsin v. Carter*, No. 2003CF88, available at <https://wcca.wicourts.gov/caseDetails> (Marathon Cty. last visited May 21, 2018).

According to Carter, after his 2014 release, his probation officers subjected him to conditions placed upon sex offenders, and a search in the Wisconsin Department of Corrections Sex Offender Registry shows that Carter is currently a registered sex offender with his obligation to register scheduled to end on September 8, 2024. *See* <https://appsdoc.wi.gov/lop/home.do> (last visited May 21, 2018). Among other things, his probation officers allegedly put Carter's face on television to inform the public that he would be released from prison, required plaintiff to inform any employers or women he meets that he is a registered sex offender, and prohibited him from being around anyone under the age of 18. As a result, Carter was evicted from his apartment and he could not find a place to live. Further, Carter was apparently reincarcerated for his failure to follow "the sex offender rules," although he does not explain what rules he violated.

## OPINION

Plaintiff's amended complaint challenges his status as a sex offender and the fact that he has to register as a sex offender under Wis. Stat. § 301.45, which establishes a requirement that certain individuals who have committed a "sex offense," as defined by the statute, must periodically register with the Department of Corrections. Plaintiff claims that § 301.45 does not apply to him because his status as a sex offender should have ended in 2007. He thus argues that the defendants violated his constitutional rights and committed defamation, invasion of privacy and false imprisonment under state law.

Although plaintiff does not couch his claim in such terms, the gist of his complaint is that the ramifications of his status as a sex offender infringed upon his liberty interests without proper procedure in violation of the Due Process Clause of the Fourteenth Amendment.<sup>2</sup> To prevail on a procedural due process claim, a plaintiff must demonstrate that he: (1) has a cognizable liberty or property interest; (2) suffered a deprivation of that

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<sup>2</sup> To the extent that plaintiff is attempting to attack his incarceration or community supervision for failure to follow the sex offender rules, such a claim is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). The Supreme Court's decision in *Heck* prohibits a plaintiff from bringing claims for damages under § 1983 if judgment in favor of the plaintiff would "necessarily imply the invalidity of his conviction or sentence." In other words, to the extent Carter is effectively attempting by this lawsuit to undo the effects of a revocation proceeding, he cannot bring such a claim unless the results of that proceeding have already been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Id.* at 486-87. While the court does not understand plaintiff to be challenging whether he *should* have been placed on the sex offender list, but rather, whether his inclusion in the sex offender registration in 2014 was improper, succeeding in this lawsuit *may* not implicate the validity of either of his convictions. For reasons explained below, however, even if *Heck* does not control because the circuit court imposed the registration requirement as part of his Wisconsin sentence, his due process rights are not infringed since he has a post-deprivation opportunity to challenge the Wisconsin Department of Corrections' imposition of a registration requirement.

interest; and (3) did not receive due process. *Khan v. Bland*, 630 F.3d 519 (7th Circuit 2010).

As to whether plaintiff suffered a deprivation of a liberty interest, the fact that he suffers from the stigmatizing effect of registering as a sex offender is not, in and of itself, sufficient. Rather, the test, known as the “stigma plus” test, asks whether “the alteration of legal status, in the sense of a deprivation of a right previously held under state law, that ‘when combined with the injury resulting from the defamation, justif[ies] the invocation of procedural safeguards.’” *Schepers v. Comm’r, Ind. Dept. of Corr.*, 691 F.3d 909, 914 (7th Cir. 2012) (quoting *Khan*, F.3d at 534)).

Here, the restrictions plaintiff is subject to as a sex offender may justify safeguards to ensure that the “sex offender” label has been properly applied. Wisconsin’s sex offender registration requirement imposes specific restrictions that have ramifications beyond damage to one’s reputation, including: prohibitions on photographing children (Wis. Stat. § 948.14(2)(a)); limits on changing one’s name or using a name other than the one registered with the DOC (Wis. Stat. § 301.47(2)); local ordinance restrictions regarding where registered offenders may live; and requirements to notify the state of any change of address and any email addresses, websites or screen names used (Wis. Stat. §§ 301.45(2)(a)(6m), (2)(g), (4m)). Moreover, plaintiff’s allegations about the specific restrictions his probation agents placed upon him -- requiring him to disclose his status as a sex offender to potential employers and completely prohibiting him from going to certain places -- confirm that he has more at stake than damage to his reputation.

As to proper process, plaintiff’s complaint is silent on this issue, but construing his allegations generously, it is reasonable to infer that he did not receive any sort of formal

process before he was placed on the registry after his 2014 release, but he still does not allege facts supporting a claim. In *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), the Supreme Court considered whether sex offenders were entitled to a hearing before being included on Connecticut's public sex offender registry. Because in Connecticut the registration requirement flowed automatically from the fact of conviction, the court concluded that a pre-deprivation hearing was not necessary since the offender effectively received due process during the criminal proceedings. *Id.* at 7. The Court of Appeals for the Seventh Circuit has further held that pre-deprivation process is also *not* required in circumstances in which one's registration status depends upon a conviction in another state. *Murphy v. Rychlowski*, 868 F.3d 561 (7th Cir. 2017). In *Murphy*, the court held that no hearing is required before an individual has been required to register as a sex offender as a result of a criminal adjudication, and even post-deprivation process is sufficient if the individual has the ability to contact the police to dispute the registration requirements. *Id.* at 567-68.

Here, plaintiff has not alleged that he lacked the ability to contest his placement on the sex offender registry by formally or informally challenging the registration requirement within the Wisconsin Probation Office or courts. Indeed, the opposite appears to be the case because he repeatedly alleges that his probation officers kept him on the registry regardless of any judicial requirement, meaning that he was free to challenge their position by contacting the officers' supervisor or more senior staff within the DOC, just as plaintiff did in *Murphy*, 868 F.3d at 567-68. Since this post-deprivation process is sufficient given the "serious threat" that sex offenders represent in our country, *id.* (quoting *McKune v. Lile*,

536 U.S. 24, 32 (2002)), plaintiff fails to state a federal constitutional claim upon which relief can be given.

As for plaintiff's remaining state law claims of defamation, invasion of privacy and false imprisonment, the court declines to exercise supplemental jurisdiction. *See* 28 U.S.C. § 1367(a) (the exercise of supplemental jurisdiction is appropriate when the state law claims are "so related" to the federal claims that "they form part of the same case or controversy"); *Carr v. CIG.UA Sec., Inc.*, 95 F.3d 544, 546 (7th Cir. 1996) (general rule is that federal courts should decline to exercise supplemental jurisdiction over state law claims if claims creating federal jurisdiction are dismissed prior to trial).

#### ORDER

IT IS ORDERED that:

- (1) Plaintiff Johnson Carter is DENIED leave to proceed, and this lawsuit is DISMISSED for failure to state a federal claim upon which relief can be granted.
- (2) The dismissal will count as a STRIKE for purposes of 28 U.S.C. § 1915(g) (barring a prisoner with three or more "strikes" or dismissals for filing a civil action or appeal that is frivolous, malicious, or fails to state a claim from bringing any more actions or appeals *in forma pauperis* unless he is in imminent danger of serious physical injury).

Entered this 23rd day of May, 2018.

BY THE COURT:

/s/  
WILLIAM M. CONLEY  
District Judge