

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

STEPHEN HEMMES,

Plaintiff,

v.

CLAY LINS, AND
SAUK COUNTY SHERIFF'S
DEPARTMENT,

Defendants.

OPINION and ORDER

Case No. 17-cv-668-wmc

Pro se plaintiff Stephen Hemmes filed this civil lawsuit pursuant to 42 U.S.C. § 1983, claiming that defendants Clay Lins and the Sauk County Sheriff Department violated his constitutional rights for their involvement in two criminal proceedings, one in Wisconsin state court, *State of Wisconsin v. Hemmes*, Case No. 2017CF000305 (Sauk Cty. filed July 7, 2017), and a second in this court, *United States v. Hemmes*, Case No. 3:16-cr-100-wmc (W.D. Wis. filed Dec. 7, 2016). Since filing his complaint, Hemmes submitted two motions to amend his complaint, which the court will grant and consider as supplements to the original complaint. (Dkt. ##9, 11.) Hemmes is proceeding *in forma pauperis* and paid the initial partial filing fee, so his complaint and amended complaint are ready for screening pursuant to 28 U.S.C. § 1915(e)(2). However, because Hemmes is challenging an ongoing state court proceeding, and his claims challenge the validity of his federal conviction, the court must dismiss this case without prejudice.

As an initial matter, Hemmes has requested a new judge to be assigned in this case because this court also presided over his federal criminal proceeding. (Dkt. #10.) While

that is true, Hemmes has not explained how this court's handling of his criminal proceeding would prejudice him in this lawsuit. In any event, this court has no personal bias or prejudice against Hemmes that would warrant recusal here. Accordingly, the motion is denied.

ALLEGATIONS OF FACT

For purposes of this order, the court accepts all well-pled allegations as true and assumes the following facts. The court has supplemented the allegations from Hemmes' complaint and supplement with dates and procedural information about Hemmes' underlying criminal proceedings from this court's publicly available filings in this matter, as well as the publicly available information about the state criminal proceeding. *Hemmes*, No. 16-cr-100-wmc (W.D. Wis. filed Dec. 7, 2016); *Hemmes*, No. 2017CF000305 (Sauk Cty. filed July 6, 2017), *see* <https://wcca.wicourts.gov> (last visited September 17, 2018).

Hemmes is currently incarcerated by the bureau of prisons at FCI-Herlong, in Herlong, California, and defendants are Clay Lins, a Sauk County detective, and the Sauk County Sheriff's department. Hemmes' state and federal criminal charges arose from Hemmes' relationship with a woman and her children who live in Baraboo, Wisconsin. Apparently Hemmes had an online relationship with this woman, he moved to Wisconsin to be with her and was living with her in 2016.

In December of 2016, Hemmes was charged in a federal indictment with violating 18 U.S.C. § 875(c), knowingly using interstate commerce to communicate a threat to injure a person, with the purpose of issuing a threat and the understanding that the

communication would be understood as a threat. The communication allegedly took place on November 9, 2016. Hemmes pled guilty to the charge and was sentenced on January 4, 2018. *Hemmes*, No. 16-cr-100-wmc, dkt. ##12, 47.

In July of 2017, while his federal case was pending, Hemmes was charged in Sauk County in a six-count state court criminal complaint for conduct that took place in June and October of 2016. Specifically, Hemmes was charged with: two violations of Wis. Stat. § 943.30(1), threats to injure/accuse of crime; two violations of Wis. Stat. § 943.20(1)(a), theft-movable property; violation of Wis. Stat. § 940.32(2), stalking; and violation of Wis. Stat. § 940.43(7), intimidate witness/person charged/felony. This proceeding is still open, with no trial currently scheduled.

In *this* lawsuit, Hemmes claims that the investigation leading to his criminal charges violated his constitutional rights. He specifically alleges that the defendants failed to investigate the underlying facts in a police report that implicated him in both his federal and state criminal proceedings. He specifically alleges that Lins failed to interview any of the alleged witnesses and committed slander, perjury and obstruction of justice, and brought false charges against him. Finally, he claims that defendants violated his freedom of speech in charging him with felony witness intimidation.

OPINION

Plaintiff is seeking leave to proceed on claims under the First, Fifth and Fourteenth Amendments of the Constitution, as well as state law. However, in these circumstances the court is required to abstain from considering *any* of the claims he is pursuing because

plaintiff's Sauk County criminal proceeding is still ongoing. Under *Younger v. Harris*, 401 U.S. 37, 45 (1971), federal courts are required to show proper respect for state judicial systems and abstain from issuing orders that would interfere with ongoing state criminal prosecutions, except in limited circumstances not present here. 401 U.S. at 45. Since plaintiff's claims in this lawsuit challenge the very process by which the Sauk County criminal complaint was prepared and filed, resolving his claims in this lawsuit would most assuredly affect, if not outright interfere with, that criminal case. Typically, the court would stay this matter subject to reopening once plaintiff's state court proceedings have concluded, *see Simpson v. Rowan*, 73 F.3d 134, 139 (7th Cir. 1995), but because plaintiff is also challenging the validity of his federal conviction based on the same factual allegations, the court must dismiss this action.

Under *Heck v. Humphrey*, for a plaintiff to recover damages for an "unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid," the plaintiff must prove "that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determinations, or called into question by a federal court's issuance of a writ of habeas corpus [under] 28 U.S.C. § 2254." 512 U.S. 477, 486-87 (1994). A claim for damages that bears a relationship to a conviction or sentence that has not been so invalidated is not cognizable under 42 U.S.C. § 1983. *Id.* Here, plaintiff has not appealed his federal conviction, nor has he suggested that he is seeking post-conviction relief to challenge his conviction. Given that plaintiff's claims in

this lawsuit challenge the validity of Lins' investigation that led to his federal conviction, this court cannot address his claims and his claims will be dismissed without prejudice.

ORDER

IT IS ORDERED that:

- (1) Plaintiff's motions to amend (dkt. ##9, 11) are GRANTED.
- (2) This case is DISMISSED without prejudice pursuant to *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).
- (3) Plaintiff's motion for a new judge (dkt. #10) is DENIED.
- (4) The clerk of court is directed to close this case.

Entered this 18th day of September, 2018.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge