

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

TYRONE MCGEE,

Plaintiff,

v.

OPINION and ORDER

BRIAN HAYES, ADMINISTRATOR, WILLIAM
LAZAR, PAROLE SUPERVISOR, HEATHER
LUHMAN, PAROLE SUPERVISOR, SADE
MURDOCK, PAROLE AGENT,

23-cv-228-wmc¹

Defendants.

Pro se plaintiff Tyrone McGee contends that probation agents initiated revocation proceedings against him, in violation of his constitutional rights. Because McGee is incarcerated and proceeding in forma pauperis, I must screen his complaint and dismiss any portion that is legally frivolous or 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. 28 U.S.C. §§ 1915 and 1915A. When screening a pro se litigant's complaint, I construe the complaint generously, accepting the allegations as true and holding it to a less stringent standard than formal pleadings drafted by lawyers. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011). With that standard in mind, I conclude that this case must be dismissed.

ANALYSIS

In October of 2021, defendant Sade Murdock placed a probation hold on McGee because a sexual assault allegation had been made against him. A month later, defendant

¹ I am exercising jurisdiction over these cases for purposes of screening only.

William Lazar imposed a 90-day sanction on McGee for a rule violation, defendant Heather Luhman filed documents to initiate a full revocation proceeding, and defendant Sade Murdock proceeded forward with the revocation. A court later revoked McGee's supervision, allegedly ignoring the facts and punishing McGee twice for the same conduct. McGee appealed to defendant Brian Hayes, the Administrator of the Division of Hearings and Appeals, who rendered a final decision revoking McGee's supervision.

McGee contends that defendants violated his rights under the Fifth Amendment's Double Jeopardy Clause. He seeks monetary damages, and he asks that this court stop all revocation proceedings until any new charges filed against him have been completed.

McGee cannot pursue monetary damages on claims challenging his revocation proceedings. Under the rule in *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), a plaintiff cannot bring claims for damages under 42 U.S.C. § 1983 if judgment in favor of the plaintiff would "necessarily imply the invalidity of his conviction or sentence." *Id.*; *see also Williams v. Wisconsin*, 336 F.3d 576, 579-80 (7th Cir. 2003) (applying *Heck* to "fact or duration" of parole); *Knowlin v. Thompson*, 207 F.3d 907, 909 (7th Cir. 2000) (success on claims challenging revocation "would necessarily imply the invalidity of [plaintiff's] Wisconsin parole revocation, which *Heck* instructs cannot be shown through a § 1983 suit"). McGee has not alleged that he successfully obtained post-conviction relief by challenging the constitutionality of his revocation proceedings. Therefore, *Heck* precludes him from pursuing damages for the circumstances surrounding his 2021 and 2022 revocation proceedings.

Nor McGee can use this lawsuit to challenge or reverse the result of his revocation proceeding; the only federal proceeding available to obtain that form of relief is a petition for a writ of habeas corpus under 28 U.S.C. § 2254. *See Moran v. Sondalle*, 218 F.3d 647, 650-51

(7th Cir. 2000) (“State prisoners who want to challenge their convictions, their sentences, or administrative orders revoking good-time credits or equivalent sentence-shortening devices, must seek habeas corpus, because they contest the fact or duration of custody.”). The Court of Appeals for the Seventh Circuit instructs that “[w]hen a plaintiff files a § 1983 action that cannot be resolved without inquiring into the validity of confinement, the court should dismiss the suit without prejudice” rather than convert it into a petition for habeas corpus. *Copus v. City of Edgerton*, 96 F.3d 1038, 1039 (7th Cir. 1996) (citing *Heck v. Humphrey*, 512 U.S. 477 (1994)).

I will dismiss this case without prejudice. If McGee successfully challenges his revocation proceedings, he may be able to pursue relief under § 1983. But I will caution McGee that each of the defendants he has named in this lawsuit would be immune from suit based on their involvement in the revocation proceedings. “[P]robation officers are absolutely immune from suits challenging conduct intimately associated with the judicial phase of the criminal process.” *Tobey v. Chibucos*, 890 F.3d 634, 649 (7th Cir. 2018) (recommending revocation is a quasi-judicial act). That means that probation agents are entitled to absolute immunity “for their activities that are analogous to those performed by judges,” which includes the “decision to grant, revoke, or deny parole, or the signing of an arrest warrant,” *Dawson v. Newman*, 419 F.3d 656, 662 (7th Cir. 2005) (citation omitted), as well as the decision to place a “parole hold,” *Smith v. Gomez*, 550 F.3d 613, 619 (7th Cir. 2008). Because the defendants either initiated McGee’s probation hold, initiated revocation proceedings, or made the decision to revoke McGee’s probation, they would not be subject to suit even if McGee’s revocation proceedings are invalidated.

ORDER

IT IS ORDERED that:

1. This case is DISMISSED without prejudice under *Heck v. Humphrey*, 512 U.S. 477 (1994).
2. The clerk of court is directed to close the case.

Entered June 6, 2023.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge