

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

ANTHONY HOWARD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	13-CV-3318
	)	
ERIC KUNKEL,	)	
	)	
Defendants.	)	
	)	

OPINION

SUE E. MYERSCOUGH, U.S. District Judge:

Plaintiff, proceeding pro se and detained in the Rushville Treatment and Detention Center, seeks leave to proceed in forma pauperis.

The “privilege to proceed without posting security for costs and fees is reserved to the many truly impoverished litigants who, within the District Court's sound discretion, would remain without legal remedy if such privilege were not afforded to them.” Brewster v. North Am. Van Lines, Inc., 461 F.2d 649, 651 (7th Cir. 1972).

Additionally, a court must dismiss cases proceeding in forma pauperis “at any time” if the action is frivolous, malicious, or fails to

state a claim, even if part of the filing fee is paid. 28 U.S.C. § 1915(d)(2). Accordingly, though Plaintiff's petition to proceed in forma pauperis will be granted because Plaintiff is indigent, Plaintiff's Complaint must still be dismissed if the Complaint does not state a federal claim.

In reviewing the Complaint, the Court accepts the factual allegations as true, liberally construing them in Plaintiff's favor. Turley v. Rednour, --- F.3d ---, 2013 WL 3336713 \* 2 (7<sup>th</sup> Cir. 2103). However, conclusory statements and labels are insufficient. Enough facts must be provided to "state a claim for relief that is plausible on its face." Alexander v. U.S., 2013 WL 3215667 \*2 (7<sup>th</sup> Cir. 2013).

Plaintiff alleges that he has been criminally charged with aggravated battery of a guard at the Rushville Treatment and Detention Center. Plaintiff's appointed public defender is allegedly "no help," and Officer Kunkel is refusing to produce exonerating video evidence. Plaintiff seeks an order from this Court directing the production of the exonerating video in Plaintiff's criminal proceedings.

This Court cannot interfere in ongoing state criminal proceedings. See Younger v. Harris, 401 U.S. 37 (1971). Plaintiff's remedy is for his attorney to file an appropriate motion in those criminal proceedings. In any event, the Court takes judicial notice that Plaintiff has now pleaded guilty to this charge and has been sentenced to two years in the Illinois Department of Corrections. *People v. Anthony Howard*, 2013CF16 (Schuyler County). If Plaintiff wants to appeal that decision, then he must file his appeal with the Illinois Court of Appeals, and then to the Illinois Supreme Court.

**IT IS ORDERED:**

1. This case is dismissed.
2. If Plaintiff wishes to appeal this dismissal, he must file a notice of appeal with this court within 30 days of the entry of judgment. Fed. R. App. P. 4(a). A motion for leave to appeal in forma pauperis should set forth the issues Plaintiff plans to present on appeal. See Fed. R. App. P. 24(a)(1)(C).

**IT IS FURTHER ORDERED: 1) Plaintiff's petition to proceed in forma pauperis is denied (d/e 2); 2) The clerk is directed to enter judgment in favor of Defendants; and 3) This case is closed.**

ENTERED: October 29, 2013

FOR THE COURT:

**s/Sue E. Myerscough**  
SUE E. MYERSCOUGH  
UNITED STATES DISTRICT JUDGE