IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

GREG STOUT, # Y19267,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 17-cv-621-MJR**
	)	
UNKNOWN PARTY (Wardens 1-3),	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

REAGAN, Chief District Judge:

Plaintiff Greg Stout, currently incarcerated at Pinckneyville Correctional Center ("Pinckneyville"), has brought this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims that Defendants unlawfully held him in prison past his release date. (Doc. 1). This case is now before the Court for a preliminary review of the Complaint pursuant to 28 U.S.C. § 1915A , which provides:

> (a) **Screening** – The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
>
> (b) **Grounds for Dismissal** – On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint–
>
> (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
>
> (2) seeks monetary relief from a defendant who is immune from such relief.

An action or claim is frivolous if "it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Frivolousness is an objective standard that refers to a claim that any reasonable person would find meritless. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). An action fails to state a claim upon which relief can be granted if it does not

plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007). The claim of entitlement to relief must cross "the line between possibility and plausibility." *Id*. at 557. At this juncture, the factual allegations of the *pro se* complaint are to be liberally construed. *See Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 821 (7th Cir. 2009).

After fully considering the allegations in Plaintiff's Complaint, the Court concludes that this action is subject to summary dismissal.

The Complaint

On January 17, 2017, Plaintiff was sentenced for several crimes to 3 years in prison with a 1-year period of MSR (commonly referred to as parole), 3 years in prison with 1 year MSR, and 3 years in prison with 2 years MSR, to run concurrently. (Doc. 1, p. 5). The judge also allegedly found that Plaintiff was entitled to receive credit for time served in custody, at 251 days, 27 days, and 173 days for each respective offense, for a total of 451 days. *Id.* Plaintiff claims his release date should have been April 24, 2017[1] based on the court's sentencing order, but he has been unconstitutionally held past that date. (Doc. 1, p. 6). Plaintiff claims this violates his due process and Eighth Amendment rights. *Id.* At the time he filed this action on June 13, 2017, he claims he had been "held unconstitutionally" for almost two months. *Id.*

As relief, Plaintiff seeks immediate release from prison, as well as compensation for the each day he spent in prison after his release date. (Doc. 1, pp. 6-7).

Discussion

Based on the allegations of the Complaint, the Court shall characterize the *pro se* action

[1] The Illinois Department of Corrections' website states that Plaintiff's projected date of parole is May 25, 2018, and his projected discharge date is May 25, 2020. Website of the Illinois Department of Corrections, Offender Search page, https://www.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx (Last visited July 12, 2017).

in a single count. The parties and the Court will use this designation in all future pleadings and orders, unless otherwise directed by a judicial officer of this Court. The designation of this count does not constitute an opinion as to its merit. Any other claim that is mentioned in the Complaint but not addressed in this Order should be considered dismissed without prejudice.

> **Count 1:** Defendants wrongfully incarcerated Plaintiff past his release date in violation of the Eighth and Fourteenth Amendments.

For the reasons to follow, this claim, and the entire action, shall be dismissed for failure to state a claim upon which relief may be granted. The dismissal shall be without prejudice.

At the outset, this Court must independently evaluate the substance of Plaintiff's claim to determine if the correct statute – in this case 42 U.S.C. § 1983 – is being invoked. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (dismissing § 1983 claims that should have been brought as petitions for writ of habeas corpus); *Bunn v. Conley*, 309 F.3d 1002, 1006-07 (7th Cir. 2002) (district court should not have recharacterized declaratory judgment action as petition for habeas corpus); *Godoski v. United States*, 304 F.3d 761, 763 (7th Cir. 2002) (court must evaluate independently the substance of the claim being brought, to see if correct statute is being invoked). A petition for a writ of habeas corpus is the proper route "[i]f the prisoner is seeking what can fairly be described as a quantum change in the level of custody-whether outright freedom, or freedom subject to the limited reporting and financial constraints of bond or parole or probation." *Graham v. Broglin*, 922 F.2d 379, 381 (7th Cir. 1991). If, however, the prisoner "is seeking a different program or location or environment, then he is challenging the conditions rather than the fact of confinement and his remedy is under civil rights law." *Id.*; *see also Pischke v. Litscher*, 178 F.3d 497, 500 (7th Cir. 1999).

In the instant case, Plaintiff requests both immediate release from custody and monetary damages. However, he cannot obtain both types of relief in the same case. Release from prison

is a remedy available only in a habeas corpus action. *See Preiser*, 411 U.S. at 500; *Graham*, 922 F.2d at 381. Compensatory and/or punitive damages may be awarded in a successful civil rights action brought under 42 U.S.C. § 1983, but monetary relief cannot be awarded in a habeas corpus action.

In order to seek release from prison in federal court, Plaintiff must bring a habeas corpus action pursuant to 28 U.S.C. § 2254. However, he may only do so after he has first presented all of his claims to the Illinois courts. Ordinarily, this would involve raising every issue in the trial court, and appealing any adverse decisions to the Illinois Appellate Court and the Illinois Supreme Court. *See* 28 U.S.C. § 2254(b); *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999); *Byers v. Basinger*, 610 F.3d 980, 985 (7th Cir. 2010). This Court has no information regarding efforts Plaintiff may have made to obtain his release in habeas actions, whether in state or federal court, so it will not opine on whether he has exhausted his remedies in the Illinois Courts or whether a federal habeas action under § 2254 is premature.

Plaintiff faces another hurdle before he may sustain a claim for damages in a civil rights case under § 1983. He seeks compensation for what he characterizes as unconstitutional imprisonment. However, an award of damages based on a sentence or conviction that is still in force is barred by the rule explained in *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 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 determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has

> already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit.

Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (emphasis in original). The Seventh Circuit elaborated upon this rule in *Simpson v. Nickel*, 450 F.3d 303, 306-307 (7th Cir. 2006):

> The Court held in *Heck* and *Edwards* that a prisoner whose grievance implies the invalidity of ongoing custody must seek review by collateral attack (28 U.S.C. §§ 2241, 2254, or 2255, or a state-law equivalent). Only after the custody is over may the prisoner use § 1983 to seek damages against persons who may have been responsible; indeed, the § 1983 claim does not accrue until the custody ends. This is not because federal courts are bound by decisions of state administrative agencies, but because as a matter of federal law any challenge to the fact or duration of custody must proceed under § 2254 or an equivalent statute. *See Preiser v. Rodriguez*, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973).

Id. Under this reasoning, Plaintiff cannot be awarded any damages in this civil rights action.

Thus, the Complaint herein fails to state a claim upon which relief may be granted. This case shall be dismissed without prejudice. The dismissal without prejudice means that Plaintiff may bring his claim for release in a federal habeas corpus action under 28 U.S.C. § 2254 – ***but only after he has exhausted his state court remedies***. Furthermore, if he obtains an order reversing, expunging, or invalidating his sentence or continued incarceration, he may bring a future civil rights action for damages. *See Polzin v. Gage*, 636 F.3d 834, 839 (7th Cir. 2011) (discussed in *Gordon v. Miller*, 528 F. App'x 673, 674 (7th Cir. 2013)). The Court makes no comment on the potential merits of either of these claims.

Disposition

For the reasons stated above, this action is **DISMISSED without prejudice** for failure to state a claim upon which relief may be granted. All pending motions are **DENIED AS MOOT**.

Plaintiff is **ADVISED** that this dismissal shall count as one of his three allotted "strikes" under the provisions of 28 U.S.C. § 1915(g). A dismissal without prejudice may count as a

strike, so long as the dismissal is made because the action is frivolous, malicious, or fails to state a claim. *See Paul v. Marberry*, 658 F.3d 702, 704 (7th Cir. 2011); *Evans v. Ill. Dep't of Corr.*, 150 F.3d 810, 811 (7th Cir. 1998).

Plaintiff's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of $350.00 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

If Plaintiff wishes to appeal this dismissal, his notice of appeal must be filed with this Court within thirty days of the entry of judgment. FED. R. APP. P. 4(a)(1)(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). If Plaintiff does choose to appeal, he will be liable for the $505.00 appellate filing fee irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). Moreover, if the appeal is found to be nonmeritorious, Plaintiff may also incur another "strike." A proper and timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be filed no more than twenty-eight (28) days after the entry of the judgment, and this 28-day deadline cannot be extended.

The Clerk shall **CLOSE THIS CASE** and enter judgment accordingly.

IT IS SO ORDERED.

DATED: July 19, 2017

s/MICHAEL J. REAGAN
Chief Judge
United States District Court