

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

**FRANK MORGAN,
C-15189,**

Petitioner,

vs.

**JOHN BALDWIN and
JACQUELINE A. LASHBROOK,**

Respondents.

Case No. 17-cv-730-DRH

MEMORANDUM AND ORDER

HERNDON, District Judge:

Petitioner Frank Morgan, an inmate who is currently incarcerated in Menard Correctional Center (“Menard”), brings this *pro se* action seeking a writ of mandamus pursuant to 735 Illinois Compiled Statutes 5/14-101 *et seq.* (Docs. 1, 1-1). Morgan claims that respondents failed to timely respond to his request for production of documents made pursuant to the Illinois Freedom of Information Act. (Doc. 1-1). He now seeks a writ of mandamus compelling a response. (Docs. 1, 1-1).

The case is before the Court for review 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.

28 U.S.C. § 1915A. After considering the allegations in the petition and accepting them as true, the Court concludes that this action is subject to summary dismissal.

The Petition

Morgan seeks an order compelling John Baldwin (Illinois Department of Corrections Director) and Jacqueline Lashbrook (Menard's warden) to respond to his request to produce documents pursuant to the Illinois Freedom of Information Act ("FOIA"). (Doc. 1, pp. 1-21; Doc. 1-1). Morgan did not provide the Court with a copy of his FOIA request(s) or describe the contents of the request(s) in his petition. *Id.* However, it appears that he seeks a formal response to grievances he filed to challenge adverse disciplinary decisions. Morgan filed several grievances as exhibits to the petition. (Doc. 1, p. 4-12). In each, he challenged adverse disciplinary rulings on Fourteenth Amendment grounds. *Id.* He also included a letter from Menard's Grievance Office, which explains that Morgan filed his grievances through the wrong channels. (Doc. 1, p. 13). Instead of using the prison's internal grievance procedure, Morgan submitted them as FOIA requests. *Id.* As a result, the Grievance Office indicates that it did not receive or respond to the grievances. *Id.*

Discussion

This Court cannot provide plaintiff with the relief he now seeks.

Mandamus is an extraordinary remedy. *Burnett v. Bowen*, 830 F.2d 731, 739 (7th Cir. 1987). It is only appropriate under limited circumstances. *Id.* In the absence of proper jurisdiction, the Court lacks power to grant any relief at all.

The writ of mandamus has been abolished. *See* FED. R. CIV. P. 81(b). However, two federal statutes are typically invoked to obtain mandamus relief, *i.e.*, 28 U.S.C. § 1361 and 28 U.S.C. § 1651. Morgan referred to neither in his petition.

The case was opened under § 1361, which grants district courts “original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” 28 U.S.C. § 1361. In the petition, Morgan does not pursue relief against an “officer or employee of the United States or any agency thereof.” *Id.* He pursues mandamus relief against two state officials under Illinois law. (Docs. 1, 1-1). Federal courts have no authority to grant mandamus relief against state officials. *Harrell v. Unknown Party*, No. 14-cv-00752-MJR (S.D. Ill. July 22, 2014); *Robinson v. Illinois*, 752 F. Supp. 248, 248-49 (N.D. Ill. 1990) (citing 28 U.S.C. § 1361) (“Federal courts have no general power to compel action by state officers[.]”). Therefore, this Court cannot order Director Baldwin or Warden Lashbrook, two state officials, to produce a response to plaintiff’s FOIA request under § 1361.

Section 1651 is commonly referred to as the “All Writs Act.” 28 U.S.C. § 1651. It provides: “The Supreme Court and all courts established by Act of

Congress may issue all writs necessary or appropriate *in aid of their respective jurisdictions* and agreeable to the usages and principles of law.” *Id.* (emphasis added). Section 1651 is not a source of jurisdiction, but rather a mechanism by which the Court asserts its jurisdiction. *United States v. Illinois Bell Telephone Co.*, 531 F.2d 809, 814 (7th Cir. 1976).

Neither statute vests this Court with jurisdiction to issue an order compelling the two state officials named in the Petition to fulfill their duties under state law. *See Coniston Corp. v. Village of Hoffman Estates*, 844 F.2d 461, 469 (7th Cir. 1988); *see also Banks v. People of the State of Illinois*, 258 F. App’x 902 (7th Cir. 2007). Whether relief is available to Morgan in state court is beyond the scope of this Order.

Had Morgan filed this case pursuant to 42 U.S.C. § 1983, he would have fared no better. A plaintiff seeking relief under § 1983 must allege the deprivation of federal or constitutional law. The only potential federal violation referred to in the Petition is a Fourteenth Amendment due process violation that allegedly resulted from the delay in processing Morgan’s FOIA requests. Morgan did not provide the Court with a copy of his FOIA requests. However, his exhibits indicate that Morgan challenged one or more adverse disciplinary decisions by filing grievances pursuant to FOIA. (Doc. 1, p. 13). The Grievance Office pointed out this error in a memo dated June 22, 2017. *Id.* Rather than resubmit his grievances on the proper forms through the correct channels, Morgan filed the instant petition.

Even if the Grievance Office improperly handled Morgan's grievances, he has no federal claim against them (or against respondents). Standing alone, the mishandling of an inmate's grievances does not give rise to an independent Fourteenth Amendment due process claim. *See Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996). The Constitution requires no procedure at all. *Maust v. Headley*, 959 F.2d 644, 648 (7th Cir. 1992); *Shango v. Jurich*, 681 F.2d 1091, 1100-01 (7th Cir. 1982). Therefore, the failure of state prison officials to follow their own procedures does not, of itself, violate the Constitution. *Id.* Moreover, "[t]he federal government is not the enforcer of state law." *Pasiewicz v. Lake Cnty. Forest Preserve Dist.*, 270 F.3d 520, 536 (7th Cir. 2001). Morgan is not entitled to any relief in federal court.

This action shall be dismissed with prejudice. The dismissal falls within the grounds enumerated in 28 U.S.C. § 1915A(b) and shall therefore result in the assessment of another "strike." However, this Order does not preclude Morgan from pursuing relief in Illinois state court.

Filing Fee

Morgan filed this action without prepaying the \$400.00 filing fee or filing a properly completed motion for leave to proceed *in forma pauperis* ("IFP Motion"). He has been instructed by the Clerk of this Court to do one or the other by August 21, 2017. (Doc. 2). However, review of Morgan's litigation history on the Public Access to Court Electronic Records ("PACER") website (www.pacer.gov) reveals that he has "struck out" by filing three or more prior federal civil actions as a

prisoner that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. *See Morgan v. DeTella*, No. 97 C 1632 (N.D. Ill. dismissed April 11, 1997); *Morgan v. Phoenix*, No. 01 C 0025 (S.D. Ill. dismissed January 29, 2003); *Morgan v. Spiller*, No. 09 C 161 (S.D. Ill. dismissed December 7, 2009).

Under the circumstances, Morgan is ineligible to proceed IFP, unless his petition demonstrates that he faces imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Morgan must clear this hurdle, even though he filed a mandamus action. *See Bruce v. Samuels*, -- U.S. --, 136 S. Ct. 627 (2016) (assumes without deciding that a mandamus petition qualifies as a “civil action” or “appeal” for purposes of 28 U.S.C. § 1915(b)). *See also Green v. Nottingham*, 09 F.3d 415, 417-18 (10th Cir. 1996) (prisoners should not be allowed to evade Prison Litigation Reform Act provisions by framing pleading as petition for mandamus). The petition, which is described in detail above, does not suggest that Morgan faces imminent danger of serious physical injury. (Docs. 1, 1-1). Therefore, he is ineligible to proceed IFP. The \$400.00 filing fee obligation stands.

Disposition

IT IS HEREBY ORDERED that the petition (Doc. 1) is **DISMISSED** with prejudice for failure to state a claim upon which relief may be granted.

Morgan is **ADVISED** that this dismissal shall count as one of his allotted “strikes” within the meaning of 28 U.S.C. § 1915(g).

IT IS ALSO ORDERED that Morgan's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of \$400.00 remains due and payable. See 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

If petitioner 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). If petitioner 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, because petitioner has "struck out" and has not shown that he is in imminent danger of serious physical injury, this Court will not grant him permission to proceed *in forma pauperis* on appeal. Finally, if the appeal is found to be nonmeritorious, Petitioner 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 is directed to **CLOSE THIS CASE** and enter judgment accordingly.

IT IS SO ORDERED.

DATED: July 25, 2017

David R. Herndon



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Judge David R. Herndon
Date: 2017.07.25
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United States District Court