

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

GREGORY KONRATH,)	
)	
Plaintiff,)	
)	CAUSE NO. 3:16-CV-489 RM
v.)	
)	
ERIC HUNERYAGER, <i>et al.</i> ,)	
)	
Defendants.)	

OPINION AND ORDER

Gregory Konrath, a *pro se* prisoner, filed a complaint pursuant to 42 U.S.C. § 1983. “A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (quotation marks and citations omitted). Nevertheless, pursuant to 28 U.S.C. § 1915A, the court must review the merits of a prisoner complaint. “In order to state a claim under [42 U.S.C.] § 1983 a plaintiff must allege: (1) that defendants deprived him of a federal constitutional right; and (2) that the defendants acted under color of state law.” Savory v. Lyons, 469 F.3d 667, 670 (7th Cir. 2006).

Mr. Konrath is currently an inmate at the Westville Correctional Facility. He first alleges that his Sixth Amendment right to counsel was violated when his attorney provided him with deficient representation during his underlying criminal case in Miami County, Indiana. This claim is foreclosed. The Constitution only protects against acts of defendants

acting under color of state law, Savory v. Lyons, 469 F.3d 667, 670 (7th Cir. 2006), and a criminal defense attorney “does not act under color of state law when performing a lawyer’s traditional functions as counsel to a defendant in a criminal proceeding.” Polk County v. Dodson, 454 U.S. 312, 325 (1981). Furthermore, to the extent Mr. Konrath is seeking some type of order declaring that his Sixth Amendment rights were violated in the criminal case, he can only seek such relief in a habeas action brought under 28 U.S.C. § 2254.¹ Preiser v. Rodriguez, 411 U.S. 475, 488 (1973) (habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement). This claim must be dismissed.

Next, Mr. Konrath asserts that the State of Indiana violated his Fourth Amendment rights when the prosecutor transferred his criminal case to a different county from where the alleged crime occurred. Based on this, Konrath seeks money damages from the State. Such a claim for money damages cannot be maintained against the State of Indiana, as it is entitled to Eleventh Amendment immunity from a damages suit. Kashani v. Purdue University, 813 F.2d. 843, 845 (7th Cir. 1987). The State of Indiana can’t be maintained as a defendant and must be dismissed from this case.

Though it is usually necessary to give a plaintiff an opportunity to file an amended complaint when a case is dismissed *sua sponte*, see Luevano v. Wal-Mart, 722 F.3d 1014 (7th Cir. 2013), that is unnecessary where the amendment would be futile. Hukic v. Aurora Loan Servs., 588 F.3d 420, 432 (7th Cir. 2009) (“[C]ourts have broad discretion to deny leave

¹Which Konrath is currently pursuing. (See DE 1 at 9.)

to amend where . . . the amendment would be futile.”). Such is the case here because no amendment could make these allegations a constitutional violation, make the private attorney a state actor, or allow Mr. Konrath to recover money damages from the State of Indiana.

For the forgoing reasons, this case is DISMISSED pursuant to 28 U.S.C. § 1915A.

SO ORDERED.

ENTERED: August 17, 2016.

/s/ Robert L. Miller, Jr.
Judge
United States District Court