

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

STATE OF INDIANA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:18-cv-00419-TWP-MJD
	)	
BRENT ALLEN SWALLERS,	)	
	)	
Defendant.	)	

**Entry Discussing Removal and Directing Remand**

For the reasons explained in this Entry, the action must be **remanded** to the Marion County Superior Court.

**Discussion**

Brent Allen Swallers, the defendant in the state court criminal case docketed as No. 49G18-1604-F6-012727, filed a notice of removal of a state court criminal action to federal court.

Pursuant to 28 U.S.C. § 1443, a criminal action commenced in a State court may be removed by a defendant to the district court if it is an action:

- (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof; [or]
- (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

A notice of removal of a criminal prosecution shall include all grounds for such removal. 28 U.S.C. § 1455(b)(2). Pursuant to 28 U.S.C. § 1455(b)(4), “[t]he United States district court in which [a] notice [of removal] is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.”

For removal to be proper under 28 U.S.C. § 1443(1), a defendant must show that (1) the right denied arises under federal law providing for specific civil rights stated in terms of racial equality, and (2) the state courts will deny or not enforce those specified federal rights. *See Johnson v. Mississippi*, 421 U.S. 213, 219 (1975). Section 1443(2) “confers a privilege of removal only upon federal officers or agents and those authorized to act with or for them in affirmatively executing duties under any federal law providing for equal rights.” *Application of County Collector of Winnebago, Ill.*, 96 F.3d at 897.

The removal statute on which Swallers relies, § 1443(1), is applicable only in a very narrow set of circumstances. *Greenwood v. Peacock*, 384 U.S. 808, 828-29 (1966). Because Swallers case does not fit into those circumstances, he cannot proceed with his attempted removal under the interpretation of § 1443(1). Swallers is not a federal officer or agent, and thus cannot rely on § 1443(2) to support removal of the prosecution. *Will Cnty. v. Johnson*, 2010 WL 780385 (N.D.Ill. Mar. 4, 2010).

Swaller’s rationale for removal does not remotely fit within either of the subsections of § 1443. Although he titles his claim as a deprivation of racial equality, Swallers’ explains that his deprivation surrounds being labeled “as a Sovereign Citizen.” (dkt. 1 at 5). His rationale of being unfairly targeted for prosecution does not justify removal under the statute, and the court cannot apply the removal statute beyond the manner in which it is written. *Application of County Collector of County of Winnebago, Ill.*, 96 F.3d 890, 895 (7th Cir. 1996)(“Removal jurisdiction is . . . completely statutory, and [the court] cannot construe jurisdictional statutes any broader than their language will bear.”)(citing *Cook v. Weber*, 698 F.2d 907, 909 (7th Cir. 1983)).

**Conclusion**

Swallers has identified no cognizable basis for removal. In the absence of any actual allegation of race discrimination, or the inability of the defendant to assert his rights under state law, this court has no jurisdiction to take over the prosecution. *See Johnson*, 421 U.S. at 219–22.

This action is REMANDED to the Marion County Superior Court.

**IT IS SO ORDERED.**

Date: 2/21/2018



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TANYA WALTON PRATT, JUDGE  
United States District Court  
Southern District of Indiana

Distribution:

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