

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CITY OF HAZELWOOD,)
)
)
Plaintiff,)
)
v.) No. 4:14CV1879 HEA
)
)
CLARENCE HOLMES,)
)
)
Defendant,)

OPINION, MEMORANDUM AND ORDER

Defendant has filed a pro se notice of removal from a municipal infraction case in which he was charged and convicted of driving while revoked and failure to appear. Defendant moves for leave to proceed in forma pauperis under 28 U.S.C. § 1915. The Court will allow defendant to proceed in forma pauperis, and the Court will dismiss this action under § 1915(e)(2)(B).

Plaintiff refers to himself as “Noble Yahudah Ben Yisreal, Power of Attorney in Fact for CLARENCE HOLMES [A CORPORATE FICTION].” He claims to be a sovereign citizen, not subject to local laws. He argues that he has “unalienable rights pursuant to U.C.C. 1-207, U.C.C. 1-308.” He claims he was denied his rights to due process and trial by jury. Defendant was found guilty by a jury on November 6, 2014, and he filed his notice of removal on that same day.

Title 28 U.S.C. § 1443(1) allows certain state criminal prosecutions to be removed to federal court. However, § 1443(1) applies only to cases involving racial inequality and defendant has made no such showing. See Georgia v. Rachel, 384 U.S. 780, 800 (1966) (“Removal is warranted only if it can be predicted by reference to a law of general application that the defendant will be denied or cannot enforce the specified federal rights in the state courts.”); Neal v. Wilson, 112 F.3d 351, 355 (8th Cir.1997) (to remove under § 1443 defendant

must rely on law providing for equal civil rights stated in terms of racial equality). As a result, this action will be dismissed.

Moreover, defendant has not met the statutory requirements for removal of criminal prosecutions under 28 U.S.C. § 1455. Under § 1455, a removal of a criminal prosecution must be filed before trial. Because defendant filed this action on the same day as his trial, the removal is untimely. Also, § 1455 requires that a defendant must file with his notice of removal “cop[ies] of all process, pleadings, and orders served upon such defendant . . .” 28 U.S.C. § 1455(a). Defendant had failed to submit copies of any papers from his criminal case. Therefore, defendant did not properly remove this action from the state court.

Accordingly,

IT IS HEREBY ORDERED that defendant’s motion for leave to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS FURTHER ORDERED that the Clerk shall mail a copy of this Order to the Circuit Court for St. Louis County, with reference to Hazelwood v. Clarence A. Holmes, Jr., No. 14SLMU00342.

Dated this 13th day of November, 2014.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE