

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

STEPHEN P. KELLY,

Plaintiff,

vs.

CLINT PULLMAN, LEWIS and
CLARK COUNTY SHERIFF'S
OFFICE, and LEWIS AND CLARK
COUNTY,

Defendants.

CV-20-79-H-CCL

Order

Plaintiff Stephen P. Kelly seeks leave to proceed *in forma pauperis* (Doc. 1) and has lodged a complaint seeking declaratory and injunctive relief and damages from Deputy Sheriff Clint Pullman, the Lewis and Clark County Sheriff's Office, and Lewis and Clark County under 42 U.S.C. § 1983.

Plaintiff completed the "Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)." The information provided in the application is sufficient to make the showing required by 28 U.S.C. § 1915(a) and the Court grants his request to proceed *in forma pauperis*.

The Court's inquiry does not end with the application to proceed *in forma pauperis*. The Court must also determine whether the lodged complaint states a claim on which relief can be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

Plaintiff claims that on October 23, 2020, Defendant Pullman refused to create an official record of Plaintiff's written criminal fraud complaint. (Doc. 2 at 9, ¶ 17). Plaintiff alleges that Defendants Lewis and Clark Sheriff's Office and Lewis and Clark County are liable for the actions of Defendant Pullman, who is a Deputy Sheriff for Lewis and Clark County. (See Doc. 2 at 4, ¶¶ 4 - 6 and 6, ¶ 12).

Plaintiff's lodged complaint fails to state a claim for relief because Plaintiff lacks standing to bring a claim based on the deputy sheriff's refusal to pursue Plaintiff's criminal fraud complaint. Plaintiff is a private citizen and as such "lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). Plaintiff likewise "lacks standing to compel an investigation or prosecution of another person." *Tia v. Criminal Investigation Demanded as Set Forth*, 441 Fed. Appx. 457, 458 (9th Cir. 2011).

In accordance with the foregoing, the Court issues the following **Order**:

1. Plaintiff's motion to proceed *in forma pauperis* (Doc. 1) is GRANTED and his filing fee is waived.
2. The Clerk shall edit the text of the docket entry for the Complaint (Doc. 2) to remove the word "LODGED." The Complaint is deemed filed on October 28, 2020.

3. Plaintiff's claims are DISMISSED and the Clerk is directed to close this case and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

Dated this 17th day of February, 2021.



CHARLES C. LOVELL
SENIOR UNITED STATES DISTRICT JUDGE