

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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|---------------------------------|---|------------------------|
| NORMAN CECIAL DONOVAN, | § | |
| TDCJ-CID NO.239739, | § | |
| Plaintiff, | § | |
| v. | § | CIVIL ACTION H-10-3466 |
| | § | |
| DANIEL R. BECK, <i>et al.</i> , | § | |
| Defendants. | § | |

OPINION ON DISMISSAL

Plaintiff Norman Cecial Donovan, a state parolee,¹ has filed a civil rights complaint pursuant to 42 U.S.C. §§ 1982, 1983, 1985, 1986, and 1988, alleging violations of the Fourth, Fifth, Eighth, and Fourteenth Amendments by Judge Daniel R. Beck, who presides over the 155th District Court of Fayette County, Texas. (Docket Entry No.1). Plaintiff also names as defendants County Attorney Peggy S. Supak and the State of Texas. (*Id.*). Plaintiff claims that he was erroneously assessed a life sentence in 1976 criminal proceedings after the state court improperly allowed the use of a prior conviction from New Mexico for enhancement purposes. (*Id.*, page 1).

Plaintiff has also filed an application to proceed *in forma pauperis* (Docket Entry No.2), which the Court will grant, and two motions for the appointment of counsel (Docket Entries No.3, No.7), which the Court will deny.

For the reasons to follow, the Court will dismiss this action pursuant to 28 U.S.C. §1915A.

¹ Plaintiff was released to parole on February 10, 1998, and is not currently incarcerated. *Donovan v. Quarterman*, Civil Action No.5:08-CV-181-C ECF (N.D. Tex. Oct. 23, 2008).

BACKGROUND

Plaintiff was convicted of escape from the Fayette County Jail on February 18, 1976, by a jury in the 25th District Court of Colorado County, Texas, in Cause Number 12-79. *Donovan v. Scott*, Civil Action No.4:94cv1105 (S.D. Tex. Aug. 28, 1995). He was sentenced to life imprisonment in the Texas Department of Criminal Justice-Institutional Division. *Id.* The Texas Court of Criminal Appeals affirmed the conviction on December 13, 1978, and denied several of his state habeas applications challenging the conviction and sentence. *Id.*

Plaintiff has filed four federal petitions for habeas relief from the 1976 conviction. *Donovan v. Quarterman*, Civil Action No.5:08-CV-181-C (N.D. Tex. Oct. 23, 2008). The first was dismissed for failure to exhaust state remedies; the second and third petitions were denied on the merits, and the fourth was dismissed as successive. *Id.*

In 2008, plaintiff filed a civil rights complaint in the United States District Court for the Northern District of Texas, Lubbock Division, seeking relief from state officials, which included Christina Melton Crain, Brad Livingston, Kim Vernon, Melinda Bozarth, and Nathaniel Quarterman, on the same grounds as in the present complaint. *Id.* In fact, plaintiff has attached to the pending complaint several pages of the complaint that he filed in Civil Action No.5:08-CV-181-C. (Docket Entry No.1, pages 4-6). The Northern District Court dismissed the complaint with prejudice as frivolous and for failure to state a claim for which relief may be granted under § 1983. *Donovan v. Quarterman*, Civil Action No.5:08-CV-181-C (N.D. Tex. Oct. 23, 2008).

Plaintiff also filed suit against defendant Daniel R. Beck in the 237th District Court of Lubbock County, Texas, in Civil Action No.2009-548,685. *Donovan v. Beck*, No.07-09-00395-CV, 2010 WL 3503566 (Tex. App.—Amarillo, 2010, no pet. h.). The state district

court dismissed his claims as frivolous pursuant to Chapter 14 of the Texas Civil Practice and Remedies Code. *Id.* The Seventh Court of Appeals for the State of Texas dismissed his appeal from the lower court's judgment for want of prosecution because plaintiff failed to comply with a deadline set by the Clerk of the Court. *Id.* Plaintiff has not filed a petition for review in the Texas Supreme Court. Texas Court website.²

DISCUSSION

The complaint in this case is governed by the Prison Litigation Reform Act ("PLRA"). The PLRA requires that the district court review a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). On review, the Court must identify cognizable claims or dismiss the complaint or any portion thereof, if the court determines that the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). Repetitious litigation raising the same cause of action as a previous or pending lawsuit is subject to dismissal under § 1915A as malicious. *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993) (claims which duplicate claims pending in another federal action by the same plaintiff are malicious).

The present complaint is almost identical to the complaint that plaintiff filed in *Donovan v. Quarterman*, Civil Action No.5:08-CV-181-C (N.D. Tex. Oct. 23, 2008). Plaintiff alleges the same basic claims in both complaints. Because the claims in this action are duplicative of those raised in Civil Action No.5:08-CV-181-C, this complaint is subject to dismissal as malicious under 28 U.S.C. § 1915A.

² <http://www.7thcoa.courts.state.tx.us/opinions/case.asp?FilingID=12011> (viewed on October 24, 2010).

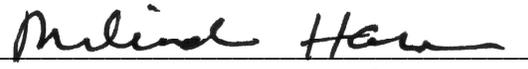
CONCLUSION

Based on the foregoing, the Court ENTERS the following ORDERS:

1. Plaintiff's civil rights complaint is DISMISSED, with prejudice, as malicious. 28 U.S.C. § 1915A.
2. Plaintiff's application to proceed *in forma pauperis* (Docket Entry No.2) is GRANTED. Plaintiff shall pay the \$350.00 filing fee as required by 28 U.S.C. § 1915(b), in periodic installments of \$5.00 a month. Plaintiff is ordered to submit the first monthly payment to the United States District Clerk, P.O. Box 61010, Houston, Texas 77208, no later than December 1, 2010.
3. All other pending motions are DENIED.

The Clerk will provide a copy of this order by facsimile transmission, regular mail, or e-mail to the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159; the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, Fax: 936-437-4793; and the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-strikes List.

SIGNED at Houston, Texas, this 4th day of November, 2010.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE