

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DESSIE LONAS,

Plaintiff,

v.

JUDGE GRIESBACH, JUDGE BISHEL, JUDGE
ZUDMULDER, A.D.A. DANA JOHNSON, OFFICER
MARY SHARTNER, BROWN COUNTY POLICE
DEPARTMENT, DEPARTMENT OF CORRECTIONS,
ATTORNEY SINGH, and ATTY. KACHINSKY,

Defendants.

OPINION & ORDER

16-cv-780-jdp

DESSIE LONAS,

Plaintiff,

v.

DANA JOHNSON,

Defendant.

OPINION & ORDER

16-cv-790-jdp

DESSIE LONAS,

Plaintiff,

v.

STATE OF WISCONSIN,

Defendant.

OPINION & ORDER

16-cv-791-jdp

Plaintiff Dessie Lonas, a Wisconsin Department of Corrections prisoner housed at the Oshkosh Correctional Institution, has filed documents styled as civil complaints in each of the three above-captioned cases, all which concern his 2008 Brown County conviction for repeated sexual assault of a child. The relief he seeks is the vacation of his conviction and a

new trial, a declaration that the repeated-sexual-assault-of-a-child criminal statute is unconstitutional, and criminal charges to be brought against officials involved in prosecuting him. Lonas seeks leave to proceed with his cases *in forma pauperis*, and he has already made initial partial payments of the filing fees previously determined by the court.

The next step is to screen each of the complaints. In doing so, I must dismiss any portion that is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. Because Lonas is a pro se litigant, I must read his allegations generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972) (per curiam).

After considering Lonas's allegations, I conclude that each of the cases must be dismissed, because this court cannot grant the relief he seeks in the type of case he brings. For instance, in the '791 case, he seeks a declaratory judgment that Wis. Stat. § 948.025 ("Engaging in repeated acts of sexual assault of the same child.") is unconstitutional. But Lonas cannot bring an action for declaratory relief where a judgment in his favor would implicitly question the validity of his conviction. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994); *Edwards v. Balisok*, 520 U.S. 641, 648 (1997) ("respondent's claim for declaratory relief and money damages . . . that necessarily imply the invalidity of the punishment imposed, is not cognizable under § 1983"). Nor can I initiate criminal proceedings or conduct a "John Doe" proceeding under Wisconsin law, as Lonas asks for in the '790 case. If Lonas wants to pursue federal criminal charges against defendants, he should contact the United States Attorney. If he wants to pursue a "John Doe" proceeding, he will have to do that in state court.

At the heart of each of these cases is Lonas's request that his conviction be vacated and that he receive a new trial. This federal court can consider this type of request only if it is included in a petition for writ of habeas corpus. I will not convert these cases into a habeas action. *See Copus v. City of Edgerton*, 96 F.3d 1038, 1039 (7th Cir. 1996) (per curiam) ("The district court was not authorized to convert a § 1983 action into a § 2254 action, a step that carries disadvantages (exhaustion and the certificate of appealability only two among many) for litigants. . . . It may be that as a § 1983 suit it is defective, but if so the proper step would have been to dismiss the complaint under Fed. R. Civ. P. 12(b)(6) or grant summary judgment, rather than to 'convert' the case to an impossible or inappropriate alternative suit.").

I will dismiss these cases. Lonas can pursue his claims by filing a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Lonas should not construe anything in this order as an opinion on the potential merits of any habeas claim he might bring. I will also warn Lonas that to pursue his claims under § 2254, he will have to demonstrate that his petition is timely and that he has complied with all applicable exhaustion requirements, meaning that he has presented his claims to the state court system before filing his federal habeas petition.

Lonas has also filed a series of letters in these cases and his other currently pending case (16-cv-752-jdp) regarding his prison trust fund account. Because I addressed those letters in the '752 case, I will not address them here.

Finally, I see no reason to hold Lonas to three separate filing fees when there was no real reason for him to file three separate lawsuits about the problems with his conviction. I will direct the clerk of court to excuse Lonas from paying the remainder of his filing fees for the '790 and '791 cases. He will still have to pay the fee in the '780 case. I will direct the

clerk of court to apply Lonas's initial partial payments from the other two cases toward his fee in the '780 case.

ORDER

IT IS ORDERED that:

1. These cases are DISMISSED without prejudice. The clerk of court is directed to enter judgment in favor of defendants and close those cases.
2. Plaintiff Dessie Lonas will not owe a filing fee for case nos. 16-cv-790-jdp and 16-cv-791-jdp. The clerk of court is directed to apply plaintiff's payments in those two cases toward the filing fee for case no. 16-cv-780-jdp.

Entered January 20, 2017.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DESSIE LONAS,

Plaintiff,

v.

JUDGMENT IN A CIVIL CASE

16-cv-791-jdp

STATE OF WISCONSIN,

Defendant.

This action came for consideration before the court with District Judge James D. Peterson presiding. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of defendant dismissing this case without prejudice.

/s/

1/20/2017

Peter Oppeneer, Clerk of Court

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DESSIE LONAS,

Plaintiff,

v.

JUDGE GRIESBACH, JUDGE BISHEL, JUDGE
ZUDMULDER, A.D.A. DANA JOHNSON, OFFICER
MARY SHARTNER, BROWN COUNTY POLICE
DEPARTMENT, DEPARTMENT OF CORRECTIONS,
ATTORNEY SINGH, and ATTY. KACHINSKY,

Defendants.

ORDER

16-cv-780-jdp

DESSIE LONAS,

Plaintiff,

v.

DANA JOHNSON,

Defendant.

ORDER

16-cv-790-jdp

DESSIE LONAS,

Plaintiff,

v.

STATE OF WISCONSIN,

Defendant.

ORDER

16-cv-791-jdp

Plaintiff Dessie Lonas, a Wisconsin Department of Corrections prisoner housed at the Oshkosh Correctional Institution, filed documents styled as civil complaints in each of the three above-captioned cases, all which concerned his 2008 Brown County conviction for repeated sexual assault of a child. Lonas sought the vacation of his conviction and a new trial,

a declaration that the repeated-sexual-assault-of-a-child criminal statute is unconstitutional, and criminal charges to be brought against officials involved in prosecuting him.

I dismissed all three of these cases in a January 20, 2017 order, because I could not grant the type of relief he sought in civil rights lawsuits brought under 42 U.S.C. § 1983. Dkt. 16 in the '780 case. In particular, I could not issue an order vacating his conviction. And under Seventh Circuit precedent, I would not convert his cases into a petition for writ of habeas corpus.

Now Lonas has filed a motion for reconsideration of the dismissal of these three cases. He states that the district attorney, police, and Department of Corrections are withholding evidence “so [he] could not file a habeas or motions to get back in a court of law” and he suggests that after writing to the clerk of court about this withholding of evidence (before he filed his lawsuits here), he was informed to file a complaint. Dkt. 19 in the '780 case, at 1. Lonas asks me to allow him to rewrite his cases or to tell him how to proceed with a challenge to his conviction.

I have directed the clerk of court to place two of its responses to Lonas's letters on the docket of his '780 case. Dkt. 21. The clerk's responses show that the clerk's office informed Lonas that he could file a civil complaint or a habeas action, depending on the type of relief he was seeking. *Id.* The clerk cannot give Lonas legal advice about which type of lawsuit to file, so it was up to Lonas to determine which type of action was best. As I explained in the January 20 order, a civil rights lawsuit was not the proper way to litigate his claims for vacation of his conviction. I will deny Lonas's motion for reconsideration because he does not persuade me that my decision was incorrect.

What I said in the previous order (and what the clerk told Lonas) holds true: to challenge his conviction, Lonas must file a postconviction motion in his state trial court or a petition for writ of habeas corpus in federal court.¹ Nothing in any of Lonas's submissions suggests that he is being blocked from filing a postconviction motion or habeas petition. If government officials are not allowing him access to certain evidence, that is an issue he should raise in his postconviction motion or habeas petition. But he must take one of those options; he cannot present this claim in the civil rights lawsuits that I have dismissed.

From the online record of Lonas's criminal proceedings, I cannot tell which option is right for him. He will have to make that decision himself. But I again warn Lonas that to pursue his claims in a habeas petition under § 2254, he will have to demonstrate that his petition is timely and that he has complied with all applicable exhaustion requirements, meaning that he has presented his claims to the state court system before filing his federal habeas petition.

ORDER

IT IS ORDERED that plaintiff Dessie Lonas's motion for reconsideration of the court's January 20, 2017 order is DENIED.

Entered February 2, 2017.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge

¹ I also note that the appropriate place to file his habeas is almost certainly the District Court for the Eastern District of Wisconsin, because that is the district in which he was sentenced and in which he is currently incarcerated.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DESSIE RUSSELL LONAS,

Plaintiff,

v.

ORDER

OSHKOSH CORRECTIONS INST. and
DEPARTMENT OF CORRECTIONS,

16-cv-752-jdp

Defendants.

DESSIE LONAS,

Plaintiff,

v.

ORDER

JUDGE GRIESBACH, JUDGE BISHEL, JUDGE
ZUDMULDER, A.D.A. DANA JOHNSON, OFFICER
MARY SHARTNER, BROWN COUNTY POLICE
DEPARTMENT, DEPARTMENT OF CORRECTIONS,
ATTORNEY SINGH, and ATTY. KACHINSKY,

16-cv-780-jdp

Defendants.

DESSIE LONAS,

Plaintiff,

v.

ORDER

DANA JOHNSON,

16-cv-790-jdp

Defendant.

DESSIE LONAS,

Plaintiff,

v.

STATE OF WISCONSIN,

Defendant.

ORDER

16-cv-791-jdp

Plaintiff Dessie Lonas, a Wisconsin Department of Corrections prisoner housed at the Oshkosh Correctional Institution, filed documents styled as civil complaints in each of these four cases. In a January 20, 2017 order, I dismissed Lonas's complaint in the '752 case (about mistreatment of a broken nose and hernia) because he did not name as a defendant any individual who failed to properly treat him. Dkt. 21 in the '752 case. I gave him a short deadline to amend his complaint to explain who violated his rights and to name those persons as defendants. The court later extended his deadline to March 13, 2017.

His three other complaints all concerned his 2008 Brown County conviction for repeated sexual assault of a child. Lonas sought to vacate his conviction and receive a new trial, a declaration that the repeated-sexual-assault-of-a-child criminal statute is unconstitutional, and criminal charges to be brought against officials involved in prosecuting him. I dismissed all three of these cases in a January 20, 2017 order, because I could not grant the type of relief he sought in civil rights lawsuits brought under 42 U.S.C. § 1983. Dkt. 16 in the '780 case. In particular, I could not issue an order vacating his conviction. And under Seventh Circuit precedent, I would not convert his cases into a petition for writ of habeas corpus. I denied Lonas's motion for reconsideration in a February 2 order. Dkt. 23 in the '780 case. In doing so, I noted that the appropriate place to file his habeas petition was

most likely the District Court for the Eastern District of Wisconsin, because that is the district in which he was sentenced and in which he is currently incarcerated.

Lonas has now filed a series of letters addressing each of his cases. With regard to the '752 case, he initially asked for an extension of time to file his amended complaint, but he now appears to be satisfied with the extension he received. He states that prison officials are refusing to give him medical records that might help him understand exactly who violated his rights. But he should not need medical records at this point. As I previously explained to him, he does not need to amend his complaint to include the actual names of prison officials who harmed him. If Lonas does not know the identity of particular defendants, he may label them as John Doe #1, John Doe #2, and so on, and the court has procedures by which he may make discovery requests to identify those defendants.

Lonas also asks whether he is required to file an "ICE complaint" about his medical treatment before he can pursue his lawsuit. Prisoners are generally required to exhaust internal prison administrative remedies before filing a lawsuit about mistreatment. *See* 42 U.S.C. § 1997e(a) ("No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."). But I cannot give Lonas detailed legal advice about his situation. I encourage him to attempt resolving his problems using the internal grievance process if he has not already done so, but it is up to him to decide whether he wishes to continue litigating the '752 case.

With regard to his other three cases, Lonas continues to argue that this court could vacate his conviction or order the release of evidence showing his innocence. He also suggests

that his mail is being tampered with, and that he has been threatened with harm if he files documents to the courts in general and the Eastern District in particular. Because one of Lonas's letters asks to change my previous orders in his three cases concerning his conviction, I will construe that letter as a motion for reconsideration and deny it. As I explained before, I cannot take any action on his current allegations. He needs to file either a formal petition for writ of habeas corpus in federal court, or a postconviction motion in state court. His allegations that he is being threatened or that his mail is being tampered with are perhaps the basis for a new lawsuit, but only after he raises these problems internally to prison officials. Once Lonas has an active habeas case, he should raise his concerns to the court hearing that case.

At this point, Lonas should understand the choices he needs to make. He has a March 13 deadline for filing his amended complaint in the '752 case. The '780, '790, and '791 cases will remain closed. Any further letters or motions for reconsideration in those cases will be deemed dismissed upon filing unless the court informs Lonas that it is taking other action. It is up to him to decide whether he wishes to file a habeas petition about his conviction.

ORDER

IT IS ORDERED that plaintiff Dessie Lonas's motion for reconsideration, Dkt. 24 in case no. 16-cv-780-jdp, is DENIED.

Entered February 27, 2017.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge