Hoeft, Richard v. Joanis, Bruce et al Doc. 9 Att. 1

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RICHARD HOEFT,

OPINION AND ORDER

Plaintiff,

17-cv-489-bbc

v.

BRUCE JOANIS, NATHANIEL DELEGAN
and JOHN DOE,

Defendants.

- -

Pro se plaintiff Richard Hoeft has filed a complaint under 42 U.S.C. § 1983 against two deputies in the Ashland County Sheriff's Department, Bruce Joanis and Nathaniel Delegan. (He also sues a John Doe defendant, but he does not discuss that defendant in the body of his complaint). Because plaintiff is proceeding in forma pauperis, his complaint is subject to screening under 28 U.S.C. § 1915(e)(2). See also Jaros v. Illinois Dept. of Corrections, 684 F.3d 667, 669 (7th Cir. 2012) ("[W]hen a district court has authorized a plaintiff to proceed in forma pauperis—as happened in this litigation—the court may screen the complaint on the authority of 28 U.S.C. § 1915(e)(2).").

Plaintiff alleges that, in 2003, defendants arrested him for burglary and then interrogated him "for over 12 hours, . . . without giving him food, water or a chance to go to the bathroom." In addition, he says that defendant Joanis pointed a gun at him and threatened to shoot him when he refused to sign a confession to the burglaries. At that

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point, plaintiff signed the confession and he says he was convicted as a result. Plaintiff contends that defendants violated his rights under the Fourth Amendment, Fifth Amendment, Sixth Amendment and Fourteenth Amendment by "h[o]ld[ing] [him] against [his will]"; preventing him from getting an attorney; giving him no food or water; causing him to urinate on himself because they would not allow him to use the bathroom; pointing a gun at him and threatening to shoot him; and forcing him to sign a confession.

I do not consider whether plaintiff's allegations state a claim upon which relief may be granted because plaintiff's claim must be dismissed for procedural reasons. First, it is clear from the face of the complaint that most of plaintiff's claims are untimely. O'Gorman v. City of Chicago, 777 F.3d 885, 889 (7th Cir. 2015) ("[A]lthough a plaintiff need not anticipate or overcome affirmative defenses such as those based on the statute of limitations, if a plaintiff alleges facts sufficient to establish a statute of limitations defense, the district court may dismiss the complaint on that ground."). Plaintiff admits that the events described in his complaint took place in 2003, and the statute of limitations for a civil rights claim in Wisconsin is six years, Reget v. City of La Crosse, 595 F.3d 691, 694 (7th Cir. 2010), so the statute of limitations on his claims expired in 2009 unless there is a ground for delaying accrual of the claim or extending the deadline under the doctrine of equitable tolling.

Plaintiff includes a statement in his complaint that his claims are timely because, under Heck v. Humphrey, 512 U.S. 477 (1994), he could not file them until he completed his sentence in 2015. This is a legal conclusion that I am not required to accept as true.

McCauley v. City of Chicago, 671 F.3d 611, 617-18 (7th Cir. 2011). In fact, Heck does not save any of his claims. Plaintiff is wrong, both about the scope of the holding in Heck and his belief that Heck no longer applies once he completes his sentence.

The holding in Heck is easily summarized: "a plaintiff may not recover damages under § 1983 when a judgment in his favor would necessarily imply the invalidity of a criminal conviction or sentence that has not been reversed, expunged, invalidated or otherwise called into question." Matz v. Klotka, 769 F.3d 517, 530 (7th Cir. 2014). A key phrase in the holding is "necessarily implied." Heck does not apply to a claim simply because it is *related* to conduct that led to a conviction. "[I]f the claim, even if successful, will not demonstrate the invalidity of the conviction, then the § 1983 action" is not barred under Heck. Helman v. Duhaime, 742 F.3d 760, 762 (7th Cir. 2014). For example, a person convicted of resisting arrest might still bring a claim of excessive force against an officer who arrested him, so long as the plaintiff does not deny any of the conduct on which conviction is based. Evans v. Poskon, 603 F.3d 362, 364 (7th Cir. 2010). See also Hill v. Murphy, 785 F.3d 242, 245 (7th Cir. 2015) (claims that officers used excessive force and detained plaintiff illegally would not undermine related convictions for attempted extortion and making false statement, so claims were not barred by Heck). In Heck itself, the Court considered whether a plaintiff could bring a Fourth Amendment claim to challenge a search that was part of an investigation that ended with the plaintiff's conviction and the Court concluded that such a claim was not barred:

> a suit for damages attributable to an allegedly unreasonable search may [be maintained] even if the challenged search produced evidence that was

> introduced in a state criminal trial that resulted in the plaintiff's still-outstanding conviction. Because of doctrines like independent source and inevitable discovery, and especially harmless error, such a § 1983 action, even if successful, would not necessarily imply that the plaintiff's conviction was unlawful.

Heck, 512 U.S. at 487 n. 7 (citations omitted).

In this case, most of plaintiff's claims do not undermine the validity of his conviction. Plaintiff could have sought damages for false arrest, false imprisonment, excessive force and food and water deprivation without regard to his conviction for burglary. Thus, all of those claims accrued when they occurred, which means the statute of limitations on those claims expired long ago.

It is reasonable to infer from the complaint that plaintiff could not prevail on his claim regarding his forced confession without invalidating his conviction. Matz, 769 F.3d at 530 (concluding that Heck barred claim for coerced confession). This means that plaintiff is correct when he says that he could not have brought that claim back in 2003. The problem is that Heck *still* bars that claim. The rule in Heck prohibits a plaintiff from bringing a claim that would imply the invalidity of a conviction unless that conviction has been "reversed, expunged, invalidated or otherwise called into question." Matz, 769 F.3d at 530. In other words, before a plaintiff can bring a claim under § 1983, he "must first achieve favorable termination of his available state, or federal habeas, opportunities to challenge the underlying conviction or sentence." Muhammad v. Close, 540 U.S. 749, 751 (2004).

In this case, plaintiff does not allege that he overturned his conviction in the context

of a petition for a writ of habeas corpus or through any other means. In fact, plaintiff filed a habeas petition in this court in which he challenged his burglary conviction on the ground that his confession was coerced, but I denied the petition on the merits, Hoeft v. Hompe, No. 08-cv-537-bbc (W.D. Wis. May 14, 2009) (adopting report and recommendation of magistrate judge), dkt. #26, and the Court of Appeals for the Seventh Circuit denied plaintiff's request for a certificate of appealability, id., dkt. #34. So long as petitioner's conviction remains in place, relief under § 1983 is unavailable, even if he can no longer obtain relief through a habeas petition, so long as he had a reasonable opportunity to seek that relief while he was serving his sentence. Haywood v. Hathaway, 842 F.3d 1026, 1029 (7th Cir. 2016); Burd v. Sessler, 702 F.3d 429, 435-36 (7th Cir. 2012). Because plaintiff had that opportunity and his claim failed on the merits, he cannot bring a claim under § 1983.

ORDER

IT IS ORDERED that plaintiff Richard Hoeft's claim that defendants Bruce Joanis and Nathaniel Delegan coerced him into signing a confession is DISMISSED under Heck v. Humphrey, 512 U.S. 477 (1994). All remaining claims are DISMISSED as untimely.

The clerk of court is directed to enter judgment accordingly and close this case.

Entered this 1st day of August, 2017.

BY THE COURT:

/s/

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BARBARA B. CRABB
District Judge