NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted December 7, 2018*
Decided December 20, 2018

Before

MICHAEL S. KANNE, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 17-3299

BENNY L. WILLIS, *Plaintiff-Appellant,*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
v.	No. 12 C 1939
KENNETH ROSS, et al., *Defendants-Appellees.*	Joan H. Lefkow, *Judge.*

ORDER

While Benny Willis was in jail awaiting trial on a charge of armed robbery, a warrant to arrest him for violating his parole was also pending. He received his parole-revocation hearing after he was convicted of armed robbery, about two years after the parole-violation warrant was issued. Willis has sued correctional officials over

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* Willis has moved the court for oral argument, but we deny the motion and decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

this delay, and the district court dismissed the suit for failure to state a claim. The judge correctly ruled that due process did not require a parole-revocation hearing while Willis was validly detained on the charge for armed robbery. *See Doyle v. Elsea*, 658 F.2d 512, 516 (7th Cir. 1981). Therefore, we affirm.

Six months after Willis began parole from state prison for drug crimes, he was arrested and detained in jail on a criminal warrant for armed robbery. The Illinois Department of Corrections also issued a warrant to arrest Willis for violating his parole, but the warrant was not executed. Willis alleges that, because that warrant remained pending, he was not released from jail while he awaited trial for armed robbery.

Willis spent 29 months in pretrial detention, followed by two sentencings. The first sentencing occurred after he pleaded guilty to armed robbery. He received a 72-month sentence, which allowed for 36 months of parole. The state court credited Willis with the 29 months that he spent in jail awaiting trial, leaving only 7 more months to serve before he began parole in August 2010. The next sentencing occurred soon after the first, when Willis went before the Illinois Prisoner Review Board for his parole-revocation hearing. The Board revoked his parole and sentenced him to 15 months in prison. It did not credit any of the 29 months that he served before his armed-robbery conviction, so the 15-month term postponed his release to April 2011, about 8 months after his estimated release on parole from the armed-robbery sentence.

After his release, Willis brought this suit for damages under 42 U.S.C. § 1983. With the aid of recruited counsel, Willis alleged that officials from the Department of Corrections denied him due process and violated state law by not holding a parole-revocation hearing promptly after his arrest for armed robbery. In his view, had he received a prompt hearing, one of two favorable outcomes would have occurred: either his parole would not have been revoked and he would have been released on bond for the charge of armed robbery, or, if his parole had been revoked, he would have served his 15-month revocation sentence during his 29 months of pretrial detention and thereby been released 8 months sooner. Willis also alleged that Michelle Littlejohn, an employee of the Parole Revocation Board, negligently computed his ultimate release date. The defendants moved to dismiss the complaint for failure to state a claim. (The defendants did not argue that, under *Heck v. Humphrey*, 512 U.S. 477 (1994), Willis may not proceed under Section 1983 because he did not first petition to invalidate his allegedly wrongful detention by seeking a writ of habeas corpus, so we do not consider that issue.)

The district court dismissed the suit. First, the judge ruled that Willis failed to state a due-process claim. She reasoned that his guilty plea supplied probable cause for his 29-month detention; thus, under *Doyle v. Elsea* he had no right to an earlier parole-revocation hearing. The judge also ruled that she "lacks supplemental jurisdiction" over Willis's related state-law claim. She then dismissed both claims with prejudice and gave Willis leave to amend his complaint to allege an Eighth Amendment claim against Littlejohn. Willis amended his complaint pro se and moved for relief under Federal Rule of Civil Procedure 59, arguing that the judge had incorrectly assumed that the Department of Corrections learned about his armed-robbery warrant after his arrest. The judge denied that motion because the assumption was irrelevant: regardless of the timeline, the armed-robbery warrant rendered the arrest and pretrial detention lawful. Finally, the judge dismissed the proposed Eighth Amendment claim against Littlejohn because Willis had not alleged that Littlejohn wrongly calculated his release date with deliberate indifference.

On appeal, Willis first challenges the dismissal of his claim that due process required corrections officers to give him to an earlier hearing on his parole-revocation charge. We review *de novo* the judge's dismissal for failure to state a claim. *Alexander v. McKinney*, 692 F.3d 553, 555 (7th Cir. 2012). To comply with due-process rights, parole officials may not revoke parole without first providing a hearing to determine if a violation has occurred. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Willis's parole was revoked *after* a hearing, so the officials respected this due-process right.

Willis replies that due process entitled him to receive this hearing two years earlier—shortly after his arrest for armed robbery—because that is when he was charged with violating parole. But we rejected this theory in *Doyle v. Elsea*, 658 F.2d at 516. Doyle was a parolee who, like Willis, was arrested for a new crime and, based on that new crime, was also charged with violating his parole. Also like Willis, Doyle remained validly in custody until he was convicted for that new crime, at which point he received a parole-revocation hearing. *Id.* at 513–14. We ruled that Doyle's delayed hearing did not violate due process because he was validly incarcerated for the new crime during the time that his parole-violation charge was pending. *Id.* at 515–16. Willis, too, was validly in jail for armed robbery while he awaited his parole-revocation hearing because his criminal warrant for armed robbery justified his pretrial detention. *See Baker v. McCollan*, 443 U.S. 137, 143–44 (1979). Therefore, under *Doyle*, due process did not require that Willis receive an earlier parole-revocation hearing.

Willis next challenges the district judge's decision to dismiss his claim that the delay of his parole-revocation hearing violated state law, but this challenge also fails. Generally, when all federal claims are dismissed before trial, the district court should relinquish supplemental jurisdiction over state-law claims, unless (1) the statute of limitations has run; (2) the claim has already consumed substantial judicial resources; or (3) the resolution of the claim is obvious. *Davis v. Cook Cty.*, 534 F.3d 650, 654 (7th Cir. 2008). Here, the resolution of this state-law claim was not clear (the court did not even analyze it), and he arguably had at least a year from the district court's dismissal to sue in state court, *see* 735 IL. COMP. STAT. 5/13–217; *Davis*, 534 F.3d at 654. We are mindful that the judge wrote that she "lacks" jurisdiction over this state-law claim and then dismissed it *with* prejudice. We read this as the judge properly exercising her discretion to relinquish supplemental jurisdiction. Thus, the dismissal of this state-law claim should have been without prejudice, and we modify the judgment on this claim accordingly.

Willis next argues, incorrectly, that the district court wrongly dismissed his claim against Littlejohn for miscalculating his release date. To state a claim under the Eighth Amendment against an official who allegedly incarcerated an inmate beyond the proper release date, a plaintiff must allege that the official knew or recklessly disregarded the correct release date. *See Werner v. Wall*, 836 F.3d 751, 760 (7th Cir. 2016), *cert. denied*, 137 S. Ct. 2213 (2017); *Figgs v. Dawson*, 829 F.3d 895, 902–03 (7th Cir. 2016). But Willis never alleged this state of mind, even after he amended his complaint and even though the Federal Rules permit plaintiffs to allege states of mind generally. *See* FED. R. CIV. P. 9(b).

Willis also contends that the district judge improperly construed his Rule 59 motion as a motion for "reconsideration." But he does not articulate any prejudice that occurred from this relabeling of his motion, and we review rulings on both types of motions for abuse of discretion, *see Gonzalez-Koeneke v. West*, 791 F.3d 801, 807 (7th Cir. 2015); *Obriecht v. Raemisch*, 517 F.3d 489, 492 (7th Cir. 2008). The judge did not abuse her discretion in denying the motion; she correctly concluded that, regardless of when the Department of Corrections learned about Willis's armed-robbery warrant, the existence of that warrant meant that Willis was validly arrested and detained. *See Cook v. O'Neill*, 803 F.3d 296, 300-01 (7th Cir. 2015).

Finally, Willis argues that the district judge abused her discretion when she recruited counsel who was not an expert in criminal procedure. But plaintiffs do not have a right to recruited counsel in federal civil litigation, *see Olson v. Morgan*, 750 F.3d 708, 711 (7th Cir. 2014), and it follows that without a right to recruited counsel, there can

be no right to counsel with a certain substantive expertise. What is more, recruited counsel is an agent of the client, not of the court, *see Fuery v. City of Chicago*, 900 F.3d 450, 467 (7th Cir. 2018); *Lombardo v. United States*, 860 F.3d 547, 552 (7th Cir. 2017) (collecting cases), and the judge is not responsible for monitoring how expertly counsel handles the case. Therefore, the judge did not abuse her discretion in recruiting Willis's counsel.

AFFIRMED AS MODIFIED.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
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Chicago, Illinois 60604

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FINAL JUDGMENT

December 20, 2018

Before: MICHAEL S. KANNE, Circuit Judge
AMY C. BARRETT, Circuit Judge
MICHAEL B. BRENNAN, Circuit Judge

No. 17-3299	BENNY L. WILLIS, Plaintiff - Appellant v. KENNETH ROSS, et al., Defendants - Appellees

Originating Case Information:

District Court No: 1:12-cv-01939
Northern District of Illinois, Eastern Division
District Judge Joan Humphrey Lefkow

The judgment of the District Court is **AFFIRMED** as **MODIFIED**.

The above in accordance with the decision of this court entered on this date. Each party shall bear their own costs.

form name: **c7_FinalJudgment**(form ID: **132**)

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6,1
Eastern Division

Benny L. Willis

Plaintiff,

v.

Case No.: 1:12–cv–01939
Honorable Joan H. Lefkow

Kenneth Ross, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, September 28, 2015:

MINUTE entry before the Honorable Joan H. Lefkow: The Court recruits Sherwin D. Abrams, Abrams & Chapman, 321 South Plymouth Court, Suite 1200, Chicago, IL 60604–3990, (312) 360–9207, e–mail: SDAbrams@sbcglobal.net as counsel for Plaintiff Benny L. Willis. Mailed notice. (mgh,)

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"Appendix-B"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BENNY L. WILLIS, Plaintiff, v. KENNETH ROSS, RICK BARD, ALAN S. HAHN, CLARENCE DUMAS, JR., AND MICHELLE LITTLEJOHN, Defendants.	)	Case No. 12 CV 1939 Judge Joan H. Lefkow

OPINION AND ORDER

Benny L. Willis filed suit against Kenneth Ross, Rick Bard, Alan S. Hahn, Clarence Dumas, Jr., and Michelle Littlejohn in March 2012, alleging various violations of his federal constitutional rights secured by 42 U.S.C. § 1983. Willis's Third Amended Complaint alleges (1) violation of his due process rights under the United States Constitution resulting from the failure of Ross, Bard, Hahn, and Dumas to ensure he received a prompt preliminary parole revocation hearing; (2) violation of his due process rights under the Illinois Constitution and his Illinois statutory right to such a hearing resulting from the same conduct; and (3) violation of his due process rights under the federal Constitution resulting from Littlejohn's negligence in miscalculating his sentence. Defendants move to dismiss all three claims for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) and to dismiss the claim against Littlejohn for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). For the reasons stated below, defendants' motion is granted with prejudice as to counts I and II, and with leave for Willis to file a Fourth Amended Complaint as to count III.

BACKGROUND[1]

On August 23, 2007, while on parole for an unrelated conviction, Willis[2] was arrested by local police in University Park, Illinois, and taken to the Will County Jail. Willis was charged with aggravated robbery.[3] The day following the arrest, Bard, an executive designee with IDOC, and Hahn, an IDOC warrant officer, signed a warrant directing that Willis be taken into custody for delivery to IDOC for having violated the conditions of his parole. Willis denies that he violated parole but, because of the warrant, he was not permitted to post bail for the aggravated robbery charge, an otherwise bailable offense under Illinois law. (Dkt. 146 at 3.) Bard, Hahn, Ross (also an IDOC warrant officer), and Dumas (Willis's parole officer) failed to provide Willis a preliminary parole revocation hearing. As a result, Willis remained in the Will County Jail for 29 months. On January 15, 2010, Willis pleaded guilty to a charge of committing aggravated robbery on August 14, 2007. He received a sentence of six years of imprisonment, with credit for 877 days of time served, and his parole was officially revoked that same day.

In March 2010, Littlejohn, an employee of the Illinois Parole Review Board (PRB),

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[1] The facts described herein are taken from the Third Amended Complaint and are accepted as true for the purposes of this motion. *See Thompson* v. *Ill. Dep't of Prof'l Reg.*, 300 F.3d 750, 753 (7th Cir. 2002) (citation omitted); Fed. R. Civ. P. 10(c). The court will also consider the additional factual allegations in Willis' response to this motion. *See United States ex rel. Hanna* v. *City of Chicago*, 834 F.3d 775, 779 (7th Cir. 2016) (quoting *Early* v. *Bankers Life & Cas. Co.*, 959 F.2d 75, 79 (7th Cir. 1992) ("The party defending the adequacy of a complaint may point to facts in a brief or affidavit 'in order to show that there is a state of facts within the scope of the complaint that if proved (a matter for trial) would entitle him to judgment.'").

[2] According to the State of Illinois inmate search website, https://www.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx (visited March 29, 2017), Willis is currently confined in the Illinois Department of Corrections in Mt. Sterling, Illinois. Willis's six-year sentence for the armed robbery conviction that gave rise to the parole violation warrant in this case was discharged, but he is currently serving a twelve-year sentence with a custody date beginning December 16, 2011. *Id.*

[3] Willis does not directly allege that he was charged on August 23 or 24, but since he admits pleading guilty to a charge of committing aggravated robbery on August 14, 2007, and he was in custody from August 23 forward for 29 months, this is the only permissible inference.

negligently miscalculated Willis's release date by adding approximately one year to the calculation, resulting in a release date of April 19, 2011, instead of August 21, 2010. This alleged error resulted in Willis's remaining incarcerated nearly eight months beyond his proper release date.

ANALYSIS

I. Failure to State a Claim

Defendants' motion to dismiss counts I and II is treated according to the well-established principles to be applied when assessing a motion to dismiss under Rule 12(b)(6). *See Ashcroft* v. *Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009); *Bell Atl.* v. *Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (holding that although a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do; also, factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true). In making this determination, the complaint is construed in the light most favorable to the plaintiff, accepting as true the well-pleaded allegations, and drawing all reasonable inferences in the plaintiff's favor. *Tamayo* v. *Blagojevich*, 526 F.3d 1074, 1081 (7th Cir. 2008).

A. Due Process Under the Fourteenth Amendment (Count I)

Check This → (3) Compl.

Willis claims that Ross, Bard, Hahn, and Dumas denied him procedural due process when they failed to provide a preliminary parole revocation hearing as mandated by *Morrissey* v. *Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). Defendants respond that, because a parole violator warrant was issued but not executed, his due process right to a preliminary hearing was not triggered.

In *Morrissey*, the Supreme Court held that a State may not revoke parole without affording the defendant due process. *Id.* at 481 (citing *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 168, 71 S. Ct. 624, 95 L. Ed. 817 (1951)). The Court imposed due process requirements at two stages of the typical process of parole revocation: first, at the time of arrest and detention of the parolee; second, when parole is formally revoked. *Morrissey*, at 485–87. At the first stage (which is at issue here), "some minimal inquiry [must] be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly convenient after arrest" "to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions." *Morrissey*, 408 U.S. at 485.[4] It is at this first stage that Wills complains that he was denied due process.

Filling in the blanks in the complaint, the court infers for purposes of this decision that soon after Willis was arrested for the aggravated robbery, police determined that he was on parole and notified IDOC, and the defendant parole authorities caused issuance of a warrant for arrest. But because Willis was already in custody for the robbery charge, they held onto the warrant while that charge awaited disposition. Since Willis alleges that he was denied bail because of the warrant, the fact of his being a parolee must have been made known to the judge who considered his request for bail.

[4] The determination must be made by someone other than the parole officer responsible for the parolee and the parolee is entitled to notice of the alleged violation, an opportunity to be present and speak in his own behalf, and to present documents, letters, and individuals who can provide relevant information. *Id.* at 487. The parolee is also entitled to question anyone who has given adverse information (absent a risk of harm to that person). *Id.* After the preliminary hearing, the hearing officer is to make a written summary of what occurs at the hearing and to determine whether there is probable cause to believe that the parolee violated, stating reasons. *Id.*

Willis contends that defendants violated his due process rights by issuing the warrant because the issuance, regardless of whether it was executed, made it impossible for him to post bail. He alleges that he had a "well-established constitutional right to a prompt preliminary parole revocation hearing" and it was the duty of the defendants to provide it. Willis's theory suggests that, if he had been provided the hearing, there would have been a finding of no probable cause for the parole violation warrant; and he would have been admitted to bail. The issue, then, is whether Willis was entitled to a preliminary hearing on the asserted parole violation reasonably close to the time of the arrest, whether or not the warrant was executed.

Defendants cite *Moody* v. *Daggett*, 429 U.S. 78, 97 S. Ct. 274, 50 L. Ed. 2d 236 (1976) and *Doyle* v. *Elsea*, 658 F.2d 512, 515–16 (7th Cir. 1981), in support of their argument that a warrant must be executed before a right to a preliminary parole revocation hearing is triggered. In *Moody*, a federal parolee was convicted of new crimes and returned to prison. Thereafter, the United States Board of Parole issued a parole violator warrant and lodged it as a detainer with prison officials. As a detainer, the parole revocation determination was placed on hold until all the sentences had been served. 429 U.S. at 80 n.2. The Board refused Moody's early request that the warrant be executed immediately so he could concurrently serve the recent sentence, the original sentence, and any sentence imposed for a parole violation. *Id.* at 81, 85. Affirming the denial of a writ of habeas corpus, the Supreme Court held that a *Morrissey*-type hearing was not constitutionally required because the petitioner was already in prison for the convictions and, therefore, had no liberty interest sufficient to invoke the right to a prompt hearing.

Doyle addressed a claim much closer to Willis's situation. There, a federal parolee was arrested on a new criminal charge and was not able to make bail because the Parole Commission issued a parole violation warrant. He remained in custody until his conviction on the new charge.

He claimed a due process right to an early parole revocation hearing because the warrant prevented him from being released on bail. The Seventh Circuit distinguished *Moody* on the basis that Moody, unlike Doyle, had already been convicted of the new crimes when the parole violation detainer was lodged, but it held that, since Doyle's liberty interest centered on his attempt to be released on bail and a "reasonably prompt" parole revocation hearing "would in no way advance [that] interest in such pretrial release,"658 F.2d at 516, his due process rights were not violated when he did not receive a hearing within three months of his arrest.

In his complaint, Willis acknowledges that he eventually pleaded guilty to aggravated robbery and his parole was revoked. He does not argue that this revocation was flawed. The only reasonable inference that can be drawn from this fact is that, had Willis received a preliminary parole revocation hearing, probable cause would have been found to hold Willis pending a parole revocation hearing. The Seventh Circuit noted in *Doyle* that "there is no reason to ignore the practical realities of [the plaintiff's] case," 658 F.2d at 517, and here the practical reality is that a preliminary parole revocation hearing would not have advanced Willis's interest in obtaining pretrial release. Thus, the court finds that Willis has failed to state a claim on which relief can be granted and count I must be dismissed with prejudice.

B. Willis' Claim for Violation of Due Process Under Illinois Law (Count II)

Because the court has determined that it must dismiss count I with prejudice and count III does not arise out of the same common nucleus of operative fact as the allegations in count II, the court lacks supplemental jurisdiction over count II. Count II will, therefore, be dismissed with prejudice.

II. Subject-Matter Jurisdiction (Count III)

"In considering a motion to dismiss for lack of subject matter jurisdiction, the district court must accept the complaint's well-pleaded factual allegations as true and draw reasonable

inferences from those allegations in the plaintiff's favor." *Transit Exp., Inc.* v. *Ettinger*, 246 F.3d 1018, 1023 (7th Cir. 2001).

Littlejohn argues that, because she was an employee of the State acting within the scope of her authority when she negligently calculated Willis's release date, count III is a tort claim against the State that must be filed in the Illinois Court of Claims. She relies on *Healy* v. *Vaupel*, 549 N.E.2d 1240, 1247, 133 Ill. 2d 295, 140 Ill. Dec. 368 (1990), holding that the Illinois State Lawsuit Immunity Act and the Court of Claims Act grant the court of claims exclusive jurisdiction to hear "[a]ll claims against the State for damages in cases sounding in tort." 705 Ill. Comp. Stat. 505/8(d); *see also* 745 Ill. Comp. Stat. 5/1. Willis argues in response that *Healy* is distinguishable because Willis alleges not a simple tort claim, but a violation of his Fourteenth Amendment due process rights.

Willis has pleaded that "[a]s a direct and proximate result of Littlejohn's negligence, plaintiff was not released until April 19, 2011, depriving him of his freedom without due process of law." (Dkt. 121 ¶ 35.) Because Willis had already been convicted when his release date was miscalculated, his claim arises under the Eighth Amendment, as to which he must show deliberate indifference to the risk that he would be deprived of liberty. *See Figgs* v. *Dawson*, 829 F.3d 895, 902 (7th Cir. 2016) ("Incarceration beyond the date when a person is entitled to be released violates the Eighth Amendment if it is the product of deliberate indifference.") "Deliberate indifference requires more than negligence or even gross negligence; a plaintiff must show that the defendant was essentially criminally reckless, that is, ignored a known risk." *Id.*at 903.

As pleaded, the Third Amended Complaint fails to state a claim for deliberate indifference and must be dismissed, but without prejudice to repleading if Willis can in good

faith allege facts supporting an inference of deliberate indifference, as opposed to negligence or gross negligence. If, however, Willis's claim is merely a claim of negligence, that claim belongs in the Illinois Court of Claims. *See Richman* v. *Sheahan*, 270 F.3d 430, 441 (7th Cir. 2001) ("The Illinois State Lawsuit Immunity Act . . . provides that the State of Illinois is immune from suit in any court, except as provided in the Illinois Court of Claims Act . . . . These state immunity rules apply to [plaintiff's] state law claims in federal court.")

CONCLUSION

For the reasons stated above, defendants' motion to dismiss counts I, II, and III (dkt. 137) is granted with prejudice as to counts I and II and without prejudice as to count III. Willis is given leave to refile by April 28, 2017. A status hearing is set for May 9, 2017 at 11:00 a.m.

Date: March 31, 2017

U.S. District Judge Joan H. Lefkow

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BENNY L. WILLIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 12 CV 1939
	)	
KENNETH ROSS, RICK BARD, ALAN S. HAHN, CLARENCE DUMAS, JR., AND MICHELLE LITTLEJOHN,	)	Judge Joan H. Lefkow
	)	
Defendants.	)	
	)	

ORDER

Plaintiff's motion under Fed. R. Civ. P. 59(e) [172] is denied. See Statement.

Statement

In an Opinion and Order entered on March 31, 2017 (dkt. no. 163), the court granted the defendants' motion to dismiss Benny Willis's third amended complaint, including count I, claiming denial of due process rights resulting from the defendants' failure to ensure he received a prompt preliminary parole revocation hearing, and count II, claiming violation of due process and statutory rights secured by Illinois law. Willis seeks reconsideration of both dismissals (although he only makes argument concerning the first).

A motion to amend judgment made before final judgment has been entered is treated as a motion for reconsideration.[1] *Broaddus v. Shields*, 665 F.3d 846, 860 n.5 (7th Cir. 2011) (overruled on other grounds by *Hill* v. *Tangherlini*, 724 F.3d 965 (7th Cir. 2013). A motion for reconsideration serves a limited purpose: "'to correct manifest errors of law or fact or to present newly discovered evidence.'" *Hicks* v. *Midwest Transit, Inc.*, 531 F.3d 467, 474 (7th Cir. 2008) (quoting *Rothwell Cotton Co.* v. *Rosenthal & Co.*, 827 F.2d 246, 251 (7th Cir. 1987)). It is only appropriate "where a court has misunderstood a party, where the court has made a decision outside the adversarial issues presented to the court by the parties, where the court has made an error of apprehension (not of reasoning), where a significant change in the law has occurred, or where significant new facts have been discovered." *Broaddus*, 665 F.3d at 860 (citing *Bank of*

[1] Final judgment has not yet entered as the court allowed Willis to amend the allegations supporting count III, which asserts a claim based on an alleged miscalculation of Willis' sentence.

Waunakee v. *Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990)). It should not be used as a "vehicle[] to advance arguments already rejected by the Court or new legal theories not argued before the ruling." *Zurich Capital Mkts. Inc.* v. *Coglianese*, 383 F. Supp. 2d 1041, 1045 (N.D. Ill. 2005) (citation omitted). Because the standard is exacting, issues appropriate for reconsideration "rarely arise." *Bank of Waunakee*, 906 F.2d at 1191 (citation omitted) (internal quotation marks omitted).

Willis believes the court misapprehended the events that led to his arrest and the parole violation warrant, and that the misapprehension led to an error of law. The facts Willis now presents were not alleged in his Third Amended Complaint, so the court made inferences, which were apparently mistaken:

> Filling in the blanks in the complaint, the court infers for purposes of this decision that soon after Willis was arrested for the aggravated robbery, police determined that he was on parole and notified IDOC, and the defendant parole authorities caused issuance of a warrant for arrest. But because Willis was already in custody for the robbery charge, they held onto the warrant while that charge awaited disposition. ...

Opinion and Order at 4. The court then understood plaintiff as advancing a theory "that, if he had been provided the [preliminary parole revocation] hearing, there would have been a finding of no probable cause for the parole violation warrant; and he would have been admitted to bail." *Id.* at 5. Relying principally on *Doyle* v. *Elsea*, 658 F.2d 512 (7th Cir. 1981), the court concluded that, "had Willis received a preliminary parole revocation hearing, probable cause [for the aggravated robbery] would have been found to hold Willis pending a [second stage] parole revocation hearing." *Id.* at 6. In short, "the practical reality is that a preliminary parole revocation hearing would not have advanced Willis's interest in obtaining pretrial release."

Willis now explains that on the day he was arrested (August 23, 2007), his parole officer came to his home ostensibly to take him to the parole office for drug testing. Willis evaded the officer by sneaking into the basement of his home. He explained to his mother that the parole officer was actually assisting the police because they wanted "to interrogate him about a crime that occurred earlier that month." He asked his mother to take him to the parole office and, sure enough, police arrested him *en route*, and he was held on an aggravated robbery charge. Therefore, Willis points out, the court's inference that his parolee status was discovered after he was arrested was incorrect. Willis asserts that the IDOC defendants issued a no-bond parole violation warrant the next day but did not execute it.

The court's apparently incorrect inference about how IDOC learned of Willis's arrest, however, does not change the fact that, had IDOC executed the warrant, the only constitutional right he enjoyed at that time was a determination as to whether there were reasonable grounds to believe he had violated parole conditions. At or about the same time, he was already in custody

based on a finding of probable cause for the robbery. As such, a preliminary parole revocation hearing would not have advanced Willis's interest in obtaining pretrial release.[2]

To the extent Willis objects to the alleged dishonesty of the parole officer who purportedly misled him about suspected drug use, or contends that the parole violation warrant did not refer to the reason the parole agency called him in (failing a drug test), he has no legal claim. *See United States* v. *McKnight*, 665 F.3d 786, 791 (7th Cir. 2011), citing *United States v. Peters*, 153 F.3d 445, 464 (7th Cir.1998) (Easterbrook, J., concurring) ("Police engage in deceit all the time in order to induce suspects to reveal evidence. ... Deception plays an important and legitimate role in law enforcement."). Finally, Willis continues to rely on federal statutes and rules governing parole revocation. These laws do not apply to parole revocation proceedings held before Illinois authorities.

Date: September 6, 2017

Joan H. Lefkow

U.S. District Judge Joan H. Lefkow

[2] An arrestee has a right to a bond hearing within 48 hours of the arrest. *See People* v. *Willis*, 215 Ill. 2d 517, 526-28, 831 N.E. 2d 531, 537 (2005). Although the court's research did not disclose Parole Board rules on the timing of a preliminary revocation hearing, a 1993 law review article states that, under a consent decree, a parolee is entitled to a preliminary revocation hearing within ten days of arrest on a parole violation warrant, but an exception is made where "a court has found probable cause at a preliminary hearing in the criminal case[.]" T. Bamonte and T. Peters, "The Parole Revocation Process in Illinois," 24 LOYOLA U. L. REV. 211, 230 (1993). The ten-day time frame was reiterated in a recent settlement announced by IDOC. See "IDOC and PRB partner to improve parole revocation process," https://www.illinois.gov/idoc/news/Pages/IDOC-and-PRB-partner-to-improve-parole-revocation-process.aspx (press release dated Jan. 25, 2017) (visited on Sept. 6, 2017); see also *U.S. ex rel. Evans* v. *Johnson*, No. 07 C 1942, 2008 WL 4365951, at *1 (N.D. Ill. Mar. 18, 2008) (construing pro se habeas petitioner as arguing that the IDOC's denial of a preliminary revocation hearing within ten business days of the issuance of his parole violation warrant failed to comply with a consent decree and thus violated his due process rights). It is most likely, then, that the bond hearing on the aggravated battery charge occurred before Willis could have received a preliminary parole revocation hearing.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

BENNY L. WILLIS (N-73578),	)	
	)	
Plaintiff,	)	
	)	Case No. 12 CV 1939
v.	)	
	)	Judge Joan Humphrey Lefkow
	)	
KENNETH ROSS, et al.,	)	
	)	
Defendants.	)	

ORDER

The Court's March 31, 2017 opinion and order [163] dismissed all of Plaintiff Benny Willis' remaining claims, including his Eighth Amendment claim against Illinois Parole Review Board employee Michelle Littlejohn based on a sentence calculation error (Count III). The Court found that the factual allegations supporting Count III only potentially supported a state tort claim but gave Willis leave to file a fourth amended complaint repleading Count III if he could, in good faith, allege facts supporting an inference of deliberate indifference, as opposed to negligence or gross negligence. Following initial review of the fourth amended complaint [169] pursuant to 28 U.S.C. § 1915A, Willis' Eighth Amendment claim against Littlejohn is dismissed with prejudice for failure to state a colorable federal claim. This dismissal is without prejudice to Willis' ability to pursue any related state law claims in an appropriate forum. As this ruling disposes of the last remaining claim in this action, final judgment shall enter. This case is terminated.

STATEMENT

Plaintiff Benny Willis is currently incarcerated at the Centralia Correctional Center based on a sentence that is unrelated to the sentencing issue raised in this case. In this civil rights action based on 42 U.S.C. § 1983, he asserts, among other things, that Illinois Parole Review Board employee Michelle Littlejohn negligently calculated his sentence following parole revocation proceedings. On March 31, 2017, the Court dismissed the third amended complaint, which had been prepared by Willis' court-recruited counsel and was directed at numerous Defendants, including Littlejohn. (Dkt. 163.) Specifically, the Court dismissed claims against all of the Defendants except Littlejohn. As to Littlejohn, the Court found that any claim against her arose under the Eighth Amendment and that Willis had not alleged any facts supporting an inference that Littlejohn had been deliberately indifferent to the risk that her sentencing calculation would violate Willis' constitutional rights by keeping him confined after his correct release date. Thus, the Court concluded that the third amended complaint's allegations, at most, potentially supported a state law negligence claim against Littlejohn that was exclusively redressable by the Illinois Court of Claims. However, the Court gave Willis leave to file a fourth amended complaint repleading his

Eighth Amendment claim against Littlejohn if he could, in good faith, allege facts supporting an inference of deliberate indifference, as opposed to negligence or gross negligence.

Willis is currently proceeding *pro se* as on April 24, 2017, the Court allowed his court-recruited counsel to withdraw at Willis' request. (Dkt. 168.) Willis' *pro se* fourth amended complaint is before the Court for initial review pursuant to 28 U.S.C. § 1915A. As with the prior versions of Willis' complaint, the Court must screen the fourth amended complaint to ensure that it states a valid claim against a defendant who is not immune from liability. *See Jones v. Bock*, 549 U.S. 199, 214 (2007); *Turley v. Rednour*, 729 F.3d 645, 649 (7th Cir. 2013). At screening, the Court accepts Willis' factual allegations as true, *Smith v. Peters*, 631 F.3d 418, 419 (7th Cir. 2011), and construes his submission liberally given his *pro se* status, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam).

As with the third amended complaint, the gist of the fourth amended complaint is that Littlejohn erroneously calculated Willis' release date, causing him to remain in state custody after his actual release date had passed. Specifically, Willis alleges that when he was on parole in 2007 in connection with an unrelated 2003 conviction, he was arrested and charged with aggravated robbery. (Dkt. 169, pg. 7.) After 29 months of incarceration at the Will County Jail, Willis pleaded guilty to the aggravated robbery charge and received a sentence of six years of imprisonment, with credit for 877 days of time served. (*Id.*) Willis subsequently "appeared before the 'Illinois Prisoner Review Board,' for the purpose of having a final 'parole revocation hearing,' concerning the amount of time he would have to serve on the new sentence" in the aggravated battery case. (*Id.*, pg. 8.) The Board advised him that it would rule by mail. (*Id.*) "Within the next week or so," Willis received a "calculation sheet" that was "signed by Ms. Littlejohn as controlling" indicating he had to serve another fifteen months of his sentence in the 2003 case. (*Id.*)

Dissatisfied with this determination, Willis filed an unavailing grievance with the facility housing him. (*Id.*, pg. 9.) He then wrote a letter to "Springfield" explaining that "someone, somewhere made a mistake." "Springfield replied . . . stating something along the lines that they could require [him] to serve up to one additional year that was not served on the [sentence in the 2003 case due to] the accumulation of 'good time credit.'" (*Id.*, pgs. 9-10.) Next, Willis filed a state court mandamus case against the "Illinois Prisoner Review Board" (*id.*, pgs. 58-60) and sent a copy of his mandamus petition to "officials at the Prisoner Review Board" (*id.*, pg. 10.) He alleges that he sent copies of additional state court filings in his mandamus action to "officials at the Prisoner Review Board" but never heard back. (*Id.*, pgs. 10-11.) A return of service attached to the fourth amended complaint in this case indicates that "S. McTaggart" in Chicago, an employee of the "IL Prisoner Review Board" was personally served with process in Willis' mandamus action. (*Id.*, pg. 69.) Willis contends that his mandamus petition was dismissed after his release from prison in 2011 and that the dismissal of his petition "establishes the fact that the officials of the Prisoner Review Board [knew that he] was being held unconstitutionally, yet, they ignored his 'Petition for Mandamus Relief." (*Id.*, pg. 11.)

According to Willis:

> Had parole officials complied to the requirements of congress, who set up "18 U.S.C. § 4201, through § 4215." [His] rights under said Federal Guidelines would not have been violated. More specifically, had "Ms. Littlejohn" not exceeded her authority under ILCS in its entirety, she would not have violated [his] constitutional rights under State and Federal laws. Plaintiff has not read one case or statute that authorized what "Ms. Littlejohn" did to him by making him serve (15) more months in prison [based on the 2013 conviction.

(*Id.*, pg. 12.)

"Subject matter jurisdiction" refers to the Court's authority to resolve a dispute. Littlejohn previously challenged the Court's subject matter jurisdiction to resolve Willis' claim against her via a motion to dismiss the third amended complaint based on her contention that Willis had, at most, asserted a state law negligence claim against her. Federal courts "have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S.Ct. 1235, 1244, 163 L.Ed. 1097 (2006) (citing *United States v. Cotton*, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002)). Thus, when a district court screens a *pro se* prisoner's complaint pursuant to 28 U.S.C. 1915A, it must consider whether subject matter jurisdiction is proper and, if so, whether the complaint states a colorable federal claim. *See Patton v. Kestel*, 668 F. App'x 166, 167 (7th Cir. 2016); 28 U.S.C. § 1915A. When considering these issues, the Court "accepts the complaint's well-pleaded factual allegations as true and draw reasonable inferences from those allegations in the plaintiff's favor." *Transit Exp., Inc. v. Ettinger*, 246 F.3d 1018, 1023 (7th Cir. 2001).

As the Court previously explained, the existence of subject matter jurisdiction turns on whether Willis' sentence calculation claim is based on federal or state law. Any federal claim arises under the Eighth Amendment as Willis had already been convicted when his release date was calculated.[1] *See Figgs v. Dawson*, 829 F.3d 895, 902 (7th Cir. 2016) ("Incarceration beyond the date when a person is entitled to be released violates the Eighth Amendment if it is the product of deliberate indifference.") If Willis is attempting to state an Eighth Amendment claim, the Court's jurisdiction is secure as any such claim arises under the federal Constitution. *See* 28 U.S.C. § 1331.

To state a colorable Eighth Amendment claim, Willis must allege facts suggesting that that Littlejohn was deliberately indifferent to the risk that he would be deprived of liberty by being held beyond the date when he was entitled to be released. *See Figgs*, 829 F.3d at 903. "Deliberate indifference requires more than negligence or even gross negligence; a plaintiff must show that the defendant was essentially criminally reckless, that is, ignored a known risk." *Id.*

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[1] Willis cites to "18 U.S.C. § 4201, through § 4215." (Dkt. 169, pg. 12.) These provisions govern parole of federal prisoners. As Willis was a state prisoner at the relevant time, they are inapplicable and do not provide a basis for federal subject matter jurisdiction.

Willis' allegations show only that Littlejohn made a mistake when she calculated his release date. After Willis received notification of his release date and concluded that it was incorrect, he filed grievances with his facility and "Springfield," initiated a state court mandamus action, and sent copies of his filings in that action to "officials at the Prisoner Review Board." It is unclear if the copies made it to Littlejohn. Documents attached to the fourth amended complaint, however, show that Adam Monreal, the Chairman of the Prisoner Review Board, filed a motion to dismiss Willis' mandamus action, along with a supporting memorandum of law. (Dkt. 169, pgs. 71-77.) In his motion to dismiss, Monreal asserted that Willis had failed to allege facts warranting mandamus relief and that, in any event, Willis' release made his request for relief moot. The state court agreed and dismissed Willis' mandamus action. (*Id.*, pg. 79.)

Even if Littlejohn received the copies of Willis' filings in his state court mandamus action (a point that is unclear), her alleged failure to act is not akin to criminal recklessness because Monreal—her superior and the Chairman of the Prisoner Review Board—responded to Willis' mandamus petition through counsel and sought to dismiss that action. Monreal's motion to dismiss in the state court mandamus action calls into question whether Littlejohn had the authority to alter Willis' release date. Regardless, nothing in Willis' fourth amended complaint suggests that Littlejohn's original calculation or her inaction afterwards potentially rises to the level of deliberate indifference. Relatedly, Willis' contention that the eventual dismissal of his state court mandamus action shows that "officials of the Prisoner Review Board [knew that he] was being held unconstitutionally" is incorrect. Instead, at most it shows that Monreal and the state court judge believed that Willis' mandamus action had been mooted by his release. Accordingly, Willis' Eighth Amendment claim against Littlejohn is dismissed with prejudice due to an absence of factual allegations that colorably suggest deliberate indifference.

This does not mean that Willis is foreclosed from challenging Littlejohn's actions, as he may also be attempting to assert a state law negligence claim against Littlejohn. Claims based on the negligence of state actors in the performance of their duties arising from their state jobs must be brought in the Illinois Court of Claims. *See Richman v. Sheahan*, 270 F.3d 430, 441 (7th Cir. 2001) ("The Illinois State Lawsuit Immunity Act . . . provides that the State of Illinois is immune from suit in any court, except as provided in the Illinois Court of Claims Act . . . . These state immunity rules apply to [plaintiff's] state law claims in federal court."); *see also Healy v. Vaupel*, 549 N.E.2d 1240, 1247, 133 Ill. 2d 295, 140 Ill. Dec. 368 (1990) (holding that the Illinois Court of Claims has exclusive jurisdiction to hear "[a]ll claims against the State for damages in cases sounding in tort"). The rule that tort actions against state actors must be brought in the Illinois Court of Claims means that this Court lacks subject matter jurisdiction over any such claim. In other words, to the extent that Willis wishes to pursue a negligence claim, he cannot do so as part of this case as this is the kind of claim that must be presented to the Illinois Court of Claims. Accordingly, any state law negligence claim against Littlejohn is dismissed without prejudice and with leave to refile it in an action before the Illinois Court of Claims.

The Court has already given Willis an opportunity to submit a *pro se* amended complaint after allowing his former counsel to withdraw and flagging the Eighth Amendment's requirements for him. As Willis is attempting to assert claims that do not implicate the Constitution, further amendment would be futile. *See Tate v. SCR Med. Transp.*, 809 F.3d 343, 346 (7th Cir. 2015)

(noting that courts generally "should give a litigant, especially a *pro se* litigant, an opportunity to amend his complaint . . . . unless it is *certain* from the face of the complaint that any amendment would be futile or otherwise unwarranted"). Accordingly, his federal claims against Littlejohn are dismissed with prejudice. To the extent that he is attempting to pursue any claims arising under state law, the Court lacks jurisdiction (*i.e.*, authority) to adjudicate a case consisting solely of state law claims. Thus, any state law claims are dismissed without prejudice to Willis' ability to pursue them before the Illinois Court of Claims. The Court offers no opinion as to whether Willis should refile or the merits of any potential claims he may have.

Final judgment will be entered. If Willis wishes to appeal, he must file a notice of appeal with this Court within thirty days of the entry of judgment. *See* Fed. R. App. P. 4(a)(1). If Willis appeals, he will be liable for the $505.00 appellate filing fee regardless of the appeal's outcome. *See Evans v. Ill. Dep't of Corr.*, 150 F.3d 810, 812 (7th Cir. 1998). If Willis seeks leave to proceed *in forma pauperis* on appeal so that he may pay the appellate filing fee in installments, he must file a motion seeking leave to do so in this Court. *See* Fed. R. App. P. 24(a)(1). His motion must include his intended grounds for appeal. If the appeal is found to be non-meritorious, Willis could be assessed a "strike" under 28 U.S.C. § 1915(g). If Willis accumulates three dismissals under 1915(g), he will not be able to file an action in federal court (except as a petition for habeas corpus relief) without prepaying the filing fee unless he demonstrates that he is in imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

Date: September 29, 2017

Joan H. Lefkow

U.S. District Judge Joan H. Lefkow

Additional material from this filing is available in the Clerk's Office.