

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FRED CARLILL,

Plaintiff,

v.

CASE NO. 07-3216-SAC

PHIL KLINE, et al.,

Defendants.

FRED CARLILL,

Plaintiff,

v.

CASE NO. 07-2496-SAC

PHIL KLINE, et al.,

Defendants.

O R D E R

Plaintiff proceeds pro se and in forma pauperis on the two complaints captioned above and consolidated by the court. The two defendants named in the consolidated action are Johnson County District Attorney Phil Kline, and Kansas Governor Kathleen Sebelius.

Plaintiff seeks damages for his alleged unlawful confinement on a felony conviction for driving on a suspended license. The court reviewed plaintiff's allegations and found the consolidated complaint was subject to being summarily dismissed without prejudice pursuant to Heck v. Humphrey, 512 U.S. 477 486-87 (1994), and Wilkinson v. Dotson, 544 U.S. 74, 82 (2005), absent supplementation of the record to show the challenged conviction and sentence had been reversed, vacated, or otherwise invalidated.

In response, plaintiff filed a motion for appointment of counsel (Doc. 9). This motion is denied. Plaintiff has no right to the assistance of counsel in this civil action, Durre v. Dempsey, 869 F.2d 543, 647 (10th Cir. 1989), and the court finds the facts and legal issues associated with plaintiff's claims do not warrant the appointment of counsel.

Also in response, plaintiff filed a "motion for relief" (Doc. 8) in which plaintiff cites difficulties he encountered in receiving and filing pleadings in the earlier of the two complaints consolidated herein, and maintains he is without funds to pay the district court filing fee.¹ Nothing in this response addresses the court's finding that Heck and Wilkinson barred plaintiff's claim for damages. Accordingly, for the reasons stated in the show cause order dated December 17, 2008, the court concludes the consolidated complaint should be dismissed without prejudice pursuant to Heck as stating no claim for relief. 28 U.S.C. § 1915(e)(2)(B)(ii).

IT IS THEREFORE ORDERED that plaintiff's motion for relief (Doc. 8) and motion for appointment of counsel (Doc. 9) are denied.

IT IS FURTHER ORDERED that the consolidated complaint is dismissed without prejudice as stating no claim for relief.

IT IS FURTHER ORDERED that the date set in Case No. 07-2496 for defendants to file a response to that complaint, and the stay entered by the court regarding that response deadline, are now moot.

¹To the extent plaintiff may be arguing that he should be entitled to proceed in forma pauperis without being obligated to pay the full \$350.00 district court filing fee as required and authorized by 28 U.S.C. § 1915(b), the court denies this request.

IT IS SO ORDERED.

DATED: This 22nd day of February 2008 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge