

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LARRY P. KENDRICK,

Petitioner,

v.

CASE NO. 07-3072-SAC

THE KANSAS PAROLE
BOARD, et al,

Respondents.

O R D E R

This "Petition for Mandamus and Quo Warranto Relief Pursuant to 28 U.S.C. §1651(a)" was filed by an inmate of the Winfield Correctional Facility, Winfield, Kansas. Petitioner named the State of Kansas and the Kansas State Parole Board (KPB) as "respondents" and claimed in conclusory fashion that he and "countless others" are being unlawfully restrained. Because Mr. Kendrick was a prisoner, the court was required by statute to screen his pleading and to dismiss the action or any portion thereof that is frivolous, fails to state a claim on which relief may be granted, or seeks relief from a defendant immune from such relief. 28 U.S.C. §1915A(a) and (b).

Upon screening, this court entered a Memorandum and Order on May 7, 2007, finding that the petition was subject to being dismissed for reasons stated therein. Mr. Kendrick was given time to supplement his pleading to show cause why the action should not be dismissed, as well as his in forma pauperis motion with adequate

financial information.

In response to the court's prior Order, Mr. Kendrick filed a "Supplemental Brief" (Doc. 7) and another "Supplemental Brief and exhibits" (Doc. 11). He also filed a supplement to his in forma pauperis motion (Doc. 8). Having considered all materials filed by petitioner, the court finds he has failed to show cause why this action should not be dismissed for the reasons set forth in the court's Memorandum and Order of May 7, 2007. Briefly summarized, the court previously found Mr. Kendrick was not entitled to mandamus or quo warranto relief against a state agency in federal court and had not alleged a proper basis for this court's jurisdiction over his claims; had not named a proper defendant for a complaint under 42 U.S.C. § 1983; and had not alleged sufficient facts in support of a federal constitutional claim. Furthermore, the court found his challenges to state parole decisions and state statutes involved matters of state law, not federal constitutional violations; and any claim of entitlement to earlier release was a habeas corpus claim requiring exhaustion of state court remedies, which had not been shown. Petitioner's responses contain mostly conclusory allegations of constitutional violations without sufficient facts in support, and fail to adequately address any of the deficiencies pointed out by the court. The court concludes that this action must be dismissed for the reasons stated herein and more specifically in its Memorandum and Order dated May 7, 2007.

OTHER PENDING MOTIONS

Mr. Kendrick styled this as a civil action and filed and supplemented a proper Motion for Leave to Proceed in forma pauperis (Doc. 2). He was ordered to submit an initial partial filing fee based upon his inmate account information, which he has since paid. The court thus finds petitioner's Motion for Leave to Proceed in forma pauperis should now be granted.

Petitioner also filed a Motion for Summary Judgment (Doc. 12). Therein, he seeks judgment against "respondents" on account of their alleged failure to submit a timely response to his pleading. However, the court has been in the process of screening the initial pleadings since this action was filed, and respondents have not yet been served with process or required to answer his petition. Thus, petitioner states no valid grounds for summary judgment. Accordingly, this motion shall be denied.

IT IS THEREFORE ORDERED that this action is dismissed and all is relief denied for failure to state a claim of federal constitutional violation.

IT IS FURTHER ORDERED that petitioner's Motion for Leave to Proceed in forma pauperis (Doc. 2) is granted; and petitioner's Motion for Summary Judgment (Doc. 12) is denied.

IT IS SO ORDERED.

Dated this 8th day of July, 2008, at Topeka, Kansas.

s/Sam A. Crow

U. S. Senior District Judge