

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RAYMOND C. MORGAN,

Plaintiff,

v.

CASE NO. 08-3067-SAC

SHERIFF LEROY GREENE,
et al.,

Defendants.

O R D E R

This civil rights complaint, 42 U.S.C. § 1983, was filed by an inmate of the Federal Correctional Institution, Greenville, Illinois. Plaintiff seeks money damages based upon his claim that he was unlawfully held by defendants on a state detainer past his release date.

On March 13, 2008, this court entered an Order, upon screening the complaint, which gave plaintiff time to submit an initial partial filing fee assessed herein of \$23.00, and to show cause why this action should not be dismissed for reasons stated in the Order including failure to state sufficient facts in support of a claim. Plaintiff has not filed a response to the court's prior Order or submitted the initial partial filing fee.

On March 19, 2008, the clerk received a letter from plaintiff dated March 12, 2008, in which he indicated he "may have been" misled on how to proceed on his claims, and had been informed he "should have first filed" in the state courts. He then asked

that, "if (he) was in the wrong," he be allowed to withdraw his complaint so he could re-submit it "on the state level, with no additional cost." However, he seemed to suggest that if he was not wrong the case should proceed. This court cannot provide legal advice to a litigant, including how to properly proceed on his claims, although in its prior Order the court did require plaintiff to disclose whether or not he had sought relief at the jail and in state court.

On April 23, 2008, beyond the time for plaintiff to respond to the court's prior Order and submit his partial fee, the Clerk received another letter from him, in which he asks to withdraw his complaint, so that he "may file it in the state courts at no additional cost." The court construes plaintiff's letter received April 23, 2008, as his Notice of Voluntary Dismissal (Doc. 7) pursuant to FRCP Rule 41(a). Under Rule 41(a), a plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves a response. The court finds this action should be dismissed, without prejudice, upon plaintiff's Notice of Dismissal (Doc. 7).

IT IS THEREFORE ORDERED that this action is dismissed upon plaintiff's Notice of Voluntary Dismissal (Doc. 7), without prejudice.

IT IS FURTHER ORDERED that plaintiff's Application for Leave to Proceed Without Prepayment of Fees (Doc. 2) is denied as moot, and the court's prior assessment of an initial partial fee of

\$23.00 and the remainder of the full filing fee herein is withdrawn.

IT IS SO ORDERED.

Dated this 24th day of April, 2008, at Topeka, Kansas.

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