

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

STATE OF KANSAS,

Plaintiff,

v.

CASE NO. 21-3113-SAC

CRAIG IVAN GILBERT,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on a notice of removal filed by the defendant in a pending criminal action in Saline County, Kansas. The notice, a 32-page filing, appears to state that plaintiff is in pretrial custody on charges of theft of a motor vehicle. He appears to identify the case number as 2021-CRM-NEW.¹

Under 28 U.S.C. § 1443, a state criminal defendant may remove the state criminal case to a federal district court if the defendant "is denied or cannot enforce ... a right under any law providing for the equal civil rights of citizens of the United States". 28 U.S.C. § 1443(1). A criminal defendant qualifies for removal under that provision by meeting a two-pronged test: "First, the petitioner must show that the right upon which the petitioner relies arises under a federal law 'providing for specific civil rights stated in terms of racial equality.' Second, the petitioner must show that he has been denied or cannot enforce that right in the state courts." *Alabama v. Conley*, 245 F.3d 1292, 1295 (11th Cir. 2001) (quoting *Georgia v. Rachel*, 384 U.S. 780, 792 (1966)). In

¹ The court's efforts to verify this information through on-line records maintained for the state courts have been unsuccessful.

addition, the removal of state-court civil or criminal actions to federal court is permissible where the action is against a federal officer, 28 U.S.C. § 1442, or a member of the armed forces, 28 U.S.C. § 1442a.

The present notice of removal does not meet these tests, as plaintiff makes only vague allegations concerning his prosecution and does not allege that he is a federal officer or a member of the armed forces. Having reviewed the materials submitted in this matter, the court finds summary remand of the criminal prosecution to the state court is warranted.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion for leave to proceed in forma pauperis (Doc. 2) is granted.

IT IS FURTHER ORDERED that this matter is remanded to the state court.

IT IS SO ORDERED.

DATED: This 29th day of April, 2021, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge