

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

STATE OF KANSAS,

Plaintiff,

v.

CASE NO. 22-3102-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 criminal action pending in the District Court of Saline County, Case No. 22CR264.

Under 28 U.S.C. § 1443, a state criminal defendant may remove a 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(a). 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 (11<sup>th</sup> Cir. 2001) (quoting *Georgia v. Rachel*, 384 U.S. 780, 792 (1966)). In addition, the removal of state-court civil or criminal actions to federal court is permissible where the action is against a federal officer, see 28 U.S.C. § 1442, or a member of the armed forces, see 28 U.S.C. § 1442a.

The present notice of removal does not meet these tests, as the

defendant 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 the summary remand of the criminal action to the state court is warranted.

IT IS, THEREFORE, BY THE COURT ORDERED that Case No. 22CR264 is remanded to the District Court of Saline County, Kansas.

IT IS FURTHER ORDERED defendant's motion to proceed in forma pauperis (Doc. 2) is granted.

**IT IS SO ORDERED.**

DATED: This 26th day of May, 2022, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge