

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CARL BRETTON STOWE, JR.,)
)
 Plaintiff)
)
v.) Civil No. 02-116-B-S
)
SHERIFF, FRANKLIN COUNTY,)
et al.,)
)
 Defendants)

RECOMMENDED DECISION ON MOTION TO DISMISS

Carl Stowe is serving a sentence in the State of Maine for terrorizing with a weapon. He has filed a complaint alleging that the defendants, acting under the color of state law, were involved in seizing several of his firearms but were in fact only authorized to seize the single firearm that was involved in his conviction. (Docket No. 1.) He asserts that this property deprivation runs afoul of the Fourteenth Amendment prohibition against the deprivation of property without due process of the law. The defendants have filed a motion to dismiss (Docket No. 10) and Stowe has not filed a response. I now recommend that the Court **GRANT** the motion to dismiss.

DISCUSSION

“In procedural due process claims, the deprivation by state action of a constitutionally protected interest in ‘life, liberty, or property’ is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law.” Zinermon v. Burch, 494 U.S. 113, 125 (1990) (quoting Parratt v. Taylor, 451 U.S. 527, 537 (1981)). When Stowe filed for in forma pauperis status I indicated that, before incurring the cost of filing this complaint, he should be aware that there

was strong United States Supreme Court and First Circuit precedent providing that claims such as his cannot be pressed under 42 U.S.C. § 1983 if there are available and adequate postdeprivation state law remedies. See Hudson v. Palmer, 468 U.S. 517, 533 (1984) (“[There is no] violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available. For intentional, as for negligent deprivations of property by state employees, the state's action is not complete until and unless it provides or refuses to provide suitable postdeprivation remedies.”); Parratt v. Taylor, 451 U.S. 527, 537 543- 44 (1981) (examining state tort recovery for adequacy as a remedy); Lowe v. Scott, 959 F.2d 323, 340 (1st Cir. 1992) (“Parratt and Hudson teach that if a state provides adequate postdeprivation remedies--either by statute or through the common-law tort remedies available in its courts--no claim of a violation of procedural due process can be brought under § 1983 against the state officials whose random and unauthorized conduct occasioned the deprivation.”).

Stowe’s claim is that the defendants exceeded their legal authority when they seized more than the one gun involved in his crime. This is the type of random and unauthorized deprivation vis-à-vis which the “Parratt-Hudson-Zinermon trilogy ...limits the procedural due process inquiry under § 1983 to the question of the adequacy of state postdeprivation remedies.” Brown v. Hot, Sexy and Safer Productions, Inc., 68 F.3d 525, 536 (1st Cir. 1995) (quoting Lowe v. Scott, 959 F.2d 323, 341 (1st Cir.1992)).

Maine Rule of Criminal Procedure 41 allows for the bringing of a motion for the return of property seized during a criminal case:

A person aggrieved by an unlawful seizure may move the Superior Court in the county in which the property was seized for the return of the property on the ground that it was illegally seized.

....

The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the court shall order that the property be restored unless otherwise subject to lawful detention. The motion may be joined with a motion to suppress evidence.

Me. R. Cr. P. 41(e). On its face the Rule 41(e) process comports with due process and is the kind of available and adequate state law postdeprivation remedy the existence of which forestalls the bringing of 42 U.S.C. § 1983 actions of this ilk. See O'Neill v. Baker, 210 F.3d 41, 50 (1st Cir. 2000) (“[T]he Parratt-Hudson doctrine plays an important part in allowing procedural claims to be resolved in state forums where states do provide adequate remedies.”). This is the argument made by the defendants in their motion and, in the absence of any counter-argument from Stowe as to why this is not so, I agree that it is appropriate to dismiss this complaint because it does not state a claim for which 42 U.S.C. § 1983 relief can be granted. Fed. R. Civ. P. 12(b)(6).

Conclusion

For these reasons I recommend that the Court **GRANT** the defendant’s motion and **DISMISS** this complaint.

NOTICE

A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

July 23, 2003

Margaret J. Kravchuk
U.S. Magistrate Judge

**U.S. District Court
District of Maine (Bangor)
CIVIL DOCKET FOR CASE #: 1:02-cv-00116-JAW
Internal Use Only**

STOWE v. SHERIFF, FRANKLIN, et al

Assigned to: JUDGE JOHN A. WOODCOCK JR.

Referred to: MAG. JUDGE MARGARET J. KRAVCHUK Date Filed: 07/17/02

Demand: \$0

Jury Demand: None

Lead Docket: None

Nature of Suit: 550 Prisoner: Civil Rights

Related Cases: None

Jurisdiction: Federal Question

Case in other court: None

Cause: 42:1983 Prisoner Civil Rights

Plaintiff

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V.

Defendant

**SHERIFF, FRANKLIN COUNTY
OF**

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