

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

ANTON CARTER,)	
)	
Plaintiff,)	
)	
v.)	15-1512
)	
JOHN COX, <i>et al.</i>)	
)	
Defendants.)	

SUMMARY JUDGMENT ORDER

Plaintiff, proceeding pro se and presently incarcerated at Cook County Jail in Chicago, Illinois, brought the present lawsuit pursuant to 42 U.S.C. § 1983 alleging a First Amendment claim for denial of access to the courts. The matter comes before this Court for ruling on the Defendants’ Motions for Summary Judgment. (Docs. 31, 39). The motions are granted.

PRELIMINARY MATTERS

Plaintiff filed a Motion Requesting Issuance of a Subpoena seeking a subpoena to issue for his own phone records from April 1, 2016 through December 1, 2016. (Doc. 35). Plaintiff filed this motion on January 12, 2017, approximately ten (10) weeks after discovery closed in this matter. *See* (Doc. 20) (setting discovery deadline of November 1, 2016). Plaintiff’s motion is therefore denied as untimely. *See Flint v. City of Belvidere*, 791 F.3d 764, 768 (7th Cir. 2015) (district courts are entitled to, and must, enforce deadlines).

Defendants each filed a Motion to Strike Plaintiff’s Motion for Summary Judgment. (Docs. 43, 44). Defendants argue in their motions that Plaintiff’s motion for summary judgment should be stricken because it was not timely filed and because it does not comply with the local rules. These arguments notwithstanding, the Court has a duty to make reasonable attempts to

address a pro se plaintiff's claims on the merits, rather than dismissing them on a technicality. *Donald v. Cook Cnty. Sheriff's Dep't*, 95 F.3d 548, 555-56 (7th Cir. 1996). The Court also has discretion in enforcing its local rules. *See Davis v. Peoria County*, 2009 WL 3258318, at *12 (C.D. Ill., filed October 8, 2009) (citing *Waldrige v. American Hoechst Corp.*, 24 F.3d 918, 923 (7th Cir. 1994)). As discussed below, Plaintiff cannot prevail even when the facts are construed in the light most favorable to him, and his motion will therefore be denied. Accordingly, Defendants' motions to strike are denied as moot.

LEGAL STANDARD FOR SUMMARY JUDGMENT

Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). All facts must be construed in the light most favorable to the non-moving party, and all reasonable inferences must be drawn in his favor. *Ogden v. Atterholt*, 606 F.3d 355, 358 (7th Cir. 2010). The party moving for summary judgment must show the lack of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In order to be a "genuine" issue, there must be more than "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

FACTS

Plaintiff was incarcerated at Pontiac Correctional Center ("Pontiac") in May 2013, serving time for a parole violation. Plaintiff had several pending criminal cases at the time, including a 2011 charge for vehicular hijacking in Cook County, Illinois. Plaintiff was representing himself in that case, and he claims that he possessed an exculpatory witness

affidavit in his legal property. Plaintiff summarized the contents of the affidavit as follows: “the victim had picked out somebody else out of a lineup before they picked me out of a lineup, and [the affiant] basically wrote an affidavit, meaning that [the] person that was actually picked out of the lineup was him, and he basically admitt[ed] to doing it.” Pl.’s Dep. 23:20-24:2.

On May 31, 2013, Plaintiff was scheduled to be transferred to Livingston County Jail (“jail”). Plaintiff initially refused the transfer because Defendant Cox, the jail’s superintendent, told Plaintiff that the jail’s policy did not allow him to bring his legal property with him. The relevant policy states: “All detainees pick[ed] up from IDOC will be advised that the only property that will be transported with them is their money and medication. All other property will be handled by IDOC. Any legal [property] will be mail[ed] out of IDOC and the[n] mailed into Livingston County Jail.” (Doc. 31-2 at 29).

Plaintiff eventually agreed to the transfer after, he asserts, Defendant Tangman agreed to have Plaintiff’s legal property shipped to Plaintiff’s sister in Iowa. Defendant Tangman does not recall this conversation. Defendant Tangman, instead, cites Pontiac’s policy stating that the property department would have been responsible for shipment of Plaintiff’s legal property to whomever Plaintiff designated. At any rate, Plaintiff’s legal property was never seen again.

Plaintiff testified that, upon notifying the Cook County judge in his pending vehicular hijacking case that he did not have access to his legal property, the judge appointed counsel to represent him. Pl.’s Dep. 41:12-19. Plaintiff testified that his attorneys thereafter attempted to locate his legal property to no avail, but Plaintiff did not know if his attorneys attempted to contact the witness who wrote the exculpatory affidavit. *Id.* 52:3-9; 61:9-20.

On March 11, 2015, Plaintiff was found guilty of vehicular hijacking. (Doc. 31-5 at 7). A copy of the docket from this case indicates that Plaintiff’s counsel filed post-trial motions on

November 15, 2015; March 2, 2016; and, May 24, 2016. *Id.* at 8-9. As of the last date shown on the docket provided to the Court, the motions appear to be unresolved.

ANALYSIS

Heck v. Humphrey

Plaintiff asserts that the Defendants impeded his ability to successfully defend his vehicular hijacking charge when Defendant Cox refused to allow Plaintiff to bring his legal property with him during transport, and then when Defendant Tangman failed to follow through on his alleged promise to send the property to Plaintiff's sister. Plaintiff asserts that the Defendants' actions not only resulted in his conviction, but the continued deprivation of these materials also hindered his ability to challenge the conviction through post-trial motions. Defendants argue that Plaintiff's claims are barred pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994).

“[W]hen a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence” *Id.* at 487. If it would, a plaintiff has no cause of action under § 1983 “unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus.” *Id.* at 489. This requirement “is necessary to prevent inmates from doing indirectly through damages actions what they could not do directly by seeking injunctive relief—challenge the fact or duration of their confinement without complying with the procedural limitations of the federal habeas statute.” *Nelson v. Campbell*, 541 U.S. 637, 647 (2004).

The Seventh Circuit has found *Heck* applicable to access-to-the-courts claims where a plaintiff has alleged prison officials hindered his ability to pursue relief related to an underlying

criminal conviction. *See Burd v. Sessler*, 702 F.3d 429, 434-35 (7th Cir. 2012) (denial of access to law library prevented prisoner from filing motion to withdraw guilty plea); *Nance v. Vieregge*, 147 F.3d 589, 591 (7th Cir. 1998) (inmate could not properly argue motion to withdraw plea of guilty because prison officials lost his legal papers during transport).

In this case, Plaintiff sought access to his legal property for purposes of defending the vehicular hijacking charges against him, and, once convicted, challenging the conviction through post-trial motions. To prevail, Plaintiff must show that the Defendants actions “hindered his efforts to pursue a legal claim.” *Lewis v. Casey*, 518 U.S. 343, 351 (1996). “If the injury in question is losing the underlying case, then *Heck v. Humphrey*...comes into play.” *Nance*, 147 F.3d at 591.

Plaintiff contends that the affidavit in question would have exonerated him at trial. If proven, this necessarily implies the invalidity of Plaintiff’s conviction. Pursuant to *Heck*, Plaintiff must successfully challenge his underlying conviction before seeking damages under §1983. He has not done so. Accordingly, the Court finds that Plaintiff’s claims are *Heck* barred.

Access to the Courts

Even if his claims were not *Heck* barred, Plaintiff cannot show that he was denied access to the courts.¹ “[T]he fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.” *Bounds v. Smith*, 430 U.S. 817, 828 (1977). “[T]he mere denial of access to a prison law library or to other legal materials is not itself a violation of a prisoner's rights; his right is to access *the courts*, and only if the defendants’ conduct prejudices a potentially meritorious challenge to the

¹ “[D]istrict courts may bypass the impediment of the *Heck* doctrine and address the merits of the case.” *Polzin v. Gage*, 636 F.3d 834, 838 (7th Cir. 2011).

prisoner's conviction, sentence, or conditions of confinement has this right been infringed.”

Marshall v. Knight, 445 F.3d 965, 968 (7th Cir. 2006) (emphasis in original).

Defendant Cox did not prevent Plaintiff from having his materials sent to the jail; he only told Plaintiff that the jail's policy prohibited Plaintiff from bringing the materials with him during transport. The jail policy directed that Plaintiff's property would be shipped separately, and once Plaintiff chose to have his property shipped elsewhere, no inference arises that any Livingston County Jail official later obstructed Plaintiff's access to the legal materials.

Defendant Tangman, on the other hand, cannot dispute Plaintiff's statements regarding the alleged promise to send the property to Plaintiff's sister; he does not remember any conversation he had with Plaintiff. Nonetheless, Defendant Tangman argues that he would not have had any personal involvement in the disposition of Plaintiff's property because arranging for the shipment of an inmate's property does not fall within his normal job duties. In support of this contention, he provides an affidavit from a correctional officer assigned to Pontiac's property department.

According to the affidavit, the property department works with the inmate to determine what property an inmate can take with him. If not allowed, the property is stored at Pontiac for one year, shipped out, or made available to the inmate's family members for pick up. Arrangements are made through the property department or an inmate's counselor. (Doc. 40-1 at 1-2, ¶¶ 6-10).

Plaintiff apparently still had his legal property with him at the time Defendant Cox arrived to transport him. Pontiac officials would have presumably known about Livingston County's restrictions limiting an inmate's property during transport to money and medications. Defendant Tangman's reliance on the Pontiac policy is therefore misplaced as the only

reasonable inferences from these facts are that Pontiac officials failed to follow the above-described policy, or that the policy was not in place at the time of Plaintiff's transfer.

Furthermore, the property officer describes her duties as including "logging inmates personal property, keeping an inventory of inmates' incoming and outgoing property...and mailing inmates' personal property." (Doc. 40-1 at 1, ¶ 2). This suggests records exist that would disclose what actually happened to Plaintiff's legal property, but Defendant Tangman has not produced any records to this end. Because these questions still remain, the Court cannot conclude that Defendant Tangman is entitled to summary judgment based upon the existence of the Pontiac policy.

Plaintiff's claims, however, fail on other grounds. Plaintiff testified that the presiding judge in his criminal case appointed counsel to represent him once Plaintiff communicated that he did not have access to his legal materials. The Seventh Circuit has interpreted *Bounds* to give officials "the choice to provide either access to a law library or access to counsel or other appropriate legal assistance." *U.S. v. Sykes*, 614 F.3d 303, 311 (7th Cir. 2010); *see also Campbell v. Clark*, 481 F.3d 967, 968 (7th Cir. 2007) ("[A]ccess to legal materials is required only for unrepresented litigants."). Given that Plaintiff was appointed counsel, and his counsel would have been able to attempt to locate the witness, or elicit information about the contents of the affidavit through cross examination, the Court finds that no reasonable juror could conclude that he was denied access to the courts.

Conclusion

As discussed above, Plaintiff's claims are barred pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994). Even if Plaintiff could maintain an action for damages under § 1983, his claims fail as a matter of law. Therefore, Defendants' motions for summary judgment are granted.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

In ruling on Plaintiff's motion for summary judgment, the Court must construe the facts in the light most favorable to the Defendants. Plaintiff cannot prevail even when the facts are construed in his favor, and, therefore, his motion for summary judgment is denied.

IT IS THEREFORE ORDERED:

- 1) Plaintiff's Motion for Issuance of a Subpoena [35] and Plaintiff's Motion for Summary Judgment [42] are DENIED.
- 2) Defendants' Motions to Strike [43][44] are DENIED.
- 3) Defendants' Motions for Summary Judgment [31][39] are GRANTED. The clerk of the court is directed to enter judgment in favor of Defendants and against Plaintiff. All pending motions not addressed below are denied as moot, and this case is terminated, with the parties to bear their own costs. Plaintiff remains responsible for the \$350.00 filing fee.
- 4) If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion for leave to appeal in forma pauperis MUST identify the issues the Plaintiff will present on appeal to assist the court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *see also Celske v Edwards*, 164 F.3d 396, 398 (7th Cir. 1999)(an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a reasonable assessment of the issue of good faith."); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000)(providing that a good faith appeal is an appeal that "a reasonable person could suppose...has some merit" from a legal perspective). If Plaintiff does choose to appeal, he will be liable for the \$505.00 appellate filing fee regardless of the outcome of the appeal.

Entered this 7th day of September, 2017.

s/Sara Darrow

SARA DARROW
UNITED STATES DISTRICT JUDGE