

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

MICHAEL ANDERSON :  
 : PRISONER  
 v. : Case No. 3:01cv2214 (SRU)  
 :  
CONNECTICUT SUPERIOR COURT, et al. :

RULING AND ORDER

This ruling decides several motions filed by the plaintiff, Michael Anderson (“Anderson”), and attempts to address some apparent confusion on Anderson’s part regarding this case and another case he previously filed. To consider the pending motions in context, the court recounts the history of the previously filed case, Anderson v. Ianotti, et al., No. 3:99cv1861 (JCH), and this case.

I. Background

Anderson’s first action was filed on September 20, 1999, and assigned to District Judge Janet C. Hall. Anderson named as defendants Frank Ianotti, Carl Taylor, Public Defender’s Office, Attorney Kanzanjan, Office of the State’s Attorney, Chief of Police and Police Officer Chute. In January 2000, Judge Hall noted that Anderson failed to include any facts in his complaint and ordered him to file an amended complaint including all of the intended defendants in the case caption and a statement of the facts supporting his claims against each defendant. Anderson did not comply with the order and the first case was dismissed without prejudice on June 22, 2000.

Anderson commenced this action by complaint dated and received by the court on October 15,

2001 (the “October 2001 complaint”). In the case caption, Anderson names as defendants the Connecticut Superior Court, Judge Owens, the New Britain Police Department and the Connecticut Department of Adult Probation. In the body of the complaint, Anderson refers to the following entities and individuals as defendants: Connecticut Department of Adult Probation, State Prosecutor Carl Taylor, Attorney Abraham Kanzanjian, Police Officer R. Williams, New Britain Police Department, Police Office Masternick, New Britain Chief of Police, City of New Britain, State Prosecutor’s Office, State Public Defender’s Office, Special Public Defender Brian Russell, Connecticut Superior Court, Younger Police Office Chute, Female Police Office Partner of Younger Chute and Public Defender Sharon Elias. Although Anderson indicates in the case caption that he intended for “others stated below” to be defendants, court rules require that all defendants be listed in the case caption. See Fed. R. Civ. P. 10(a). Thus, the additional persons and entities mentioned in the body of the October 2001 complaint are not defendants in this case. The allegations of the October 2001 complaint begin with Anderson’s arrest on narcotics charges in November 1995, and include the subsequent events relating to the arrest and prosecution.

In March 2002, Anderson filed a motion to amend the complaint in this action. He sought to include “as originally [] intended” the following defendants: Judge Owens, Superior Court, Attorney Daniel Dilzer, Public Defender’s Office, other unknown defendants and Prosecuting Attorney’s Office. On June 4, 2002, while this motion was pending, Anderson filed another amended complaint. That amended complaint (the “June 2002 complaint”) has been docketed. The named defendants in the June 2002 complaint are: Superior Court of Connecticut, Howard T. Owens, Department of Probation, Unknown Probation Officer, Department of Correction and Commissioner John Armstrong. The

allegations of the June 2002 complaint concern Anderson's July 2001 arrest for violation of probation, subsequent court appearances and his resulting incarceration. (See Doc. #13.)

## II. Discussion

### A. Motion to Reopen or Correct [doc. #10]

Anderson has filed several motions suggesting that he believed that the case assigned to Judge Hall and the present case are the same case. Although the present case was never assigned to Judge Hall, Anderson repeatedly refers to the present case number as "3:01cv2214 (SRU) and/or (JCH)." In addition, he includes the case caption from the first case or a combination of the two case captions on most of the documents filed in this case.

Anderson appears to have realized this mistake in March 2002, when he filed a document entitled "Motion to Correct and/or Reopen." In that motion, Anderson states that his two cases are "the same" and he asks the court to "establish the correct docket number" and to reopen the first case and "make it the same" as this case. (See Doc. #10.)

If he wants to reopen the first case, Anderson v. Ianotti, et al., No. 3:99cv1861 (JCH), Anderson must file a motion to reopen in that case, using the case caption and docket number for that case. Anderson cannot reopen the first case by filing a motion in this case.

A review of the defendants in the first case and the entities and individuals referenced in the original complaint filed in this case suggests that both cases concern the same underlying incidents. The court concludes that Anderson mistakenly filed this case when he should have filed an amended complaint in Anderson v. Ianotti, as he had been ordered to do by the court. If this conclusion is correct, Anderson should withdraw this action and file a motion to reopen in Anderson v. Ianotti,

accompanied by an amended complaint including all defendants in the case caption and including a brief statement of the facts supporting his claims against each defendant. If his motion to reopen the case assigned to Judge Hall is granted, Anderson will have accomplished what he sought in his Motion to Correct and/or Reopen.

Accordingly, Anderson's Motion to Correct and/or Reopen [doc. #10] is denied without prejudice to his withdrawing this action and filing a motion to reopen along with an amended complaint in Anderson v. Ianotti, et al., No. 3:99cv1861 (JCH).

B. Motions Seeking Subpoenas [docs. ## 9, 17]

Anderson has filed two motions asking the court to issue subpoenas in this case. In the first motion, Anderson asks this court to order the state court clerk's office and stenographer to provide him

certified copies of the court's transcripts for the dates of all date [sic] prior to August 28, 2002, and court transcripts for 8/28/01, 9/04/01, 9/28/01, and any and all documents, records, or material related to the above case and matter in the possession, custody or control of the office of the clerk of the court, court stenographer or any other person of which is known or may become known to the court clerk's office through the exercise of due diligence.

(Doc. #9.)

The second motion is entitled "Subpoena and Request for the Preservation of Records, Documents and Evidence." Essentially, this motion consists of ten pages of interrogatories and requests for production.

Federal statutes require the court to review all complaints filed in forma pauperis to determine whether the complaint should be dismissed as frivolous or as failing to state a claim upon which relief may be granted. See 28 U.S.C. §§ 1915A & 1915(e)(2)(B). To date, this complaint has not been

evaluated. Accordingly, the issuance of any subpoena to facilitate discovery is premature. Anderson's motions [docs. ## 9, 17] are denied without prejudice as premature.

C. Motion to Amend [doc. #7]

As stated above, Anderson filed a motion for leave to amend his complaint in March 2002. Subsequently, he filed another amended complaint that has been docketed. Accordingly, the motion to amend [doc. #7] is denied as moot.

Anderson is advised that an amended complaint completely replaces the original complaint. See International Controls Corp. v. Vesco, 556 F.2d 665, 668 (2d Cir. 1977), (because amended complaint supersedes original complaint and renders former complaint of no legal effect, amended complaint must contain all claims against defendants and relief requested), cert. denied, 434 U.S. 1014 (1978). Thus, when he filed his amended complaint containing only claims arising from his July 2001 arrest for violation of probation, Anderson abandoned all other claims that were contained in the original complaint. If Anderson does not withdraw this action, the court will review the amended complaint to determine whether any of the claims therein should proceed.

D. Miscellaneous Motions [docs. ## 6, 11]

Anderson seeks waiver of the fee for filing motions. The federal court does not charge a fee to file a motion. Thus, Anderson's "Request for Waiver of Court Fees and Costs" [doc. #6] is denied as moot.

In addition, Anderson has filed a document asking to be excused from including legal citations in his motions. He states that he is on confined-to-quarters status and does not have access to the

prison law library or legal materials. Anderson's address in the court files is not a Connecticut correctional facility. The court has verified with the Connecticut Department of Correction that Anderson is no longer incarcerated. Thus, his "Request to be Allowed to Without Having to Cite the Authority to the Cases and Matters Presented by Plaintiff Due to Lack" [doc. #11] is denied as moot.

E. Motions Regarding Preliminary Injunctive Relief [docs. ## 8, 14]

Anderson has filed a motion seeking a restraining order and preliminary injunction. He asks the court to order his release from "confinement and imprisonment." As indicated above, Anderson has been released from prison. Accordingly, his motion [doc. #8] is denied as moot. In addition, even if Anderson still could be considered to be under the custody of the Department of Correction, the motion should be denied. Release from custody only may be obtained by a writ of habeas corpus. "A state prisoner may not bring a civil rights action in federal court under [section] 1983 to challenge either the validity of his conviction or the fact or duration of his confinement." Mack v. Varelas, 835 F.2d 995, 998 (2d Cir. 1987) (citing Preiser v. Rodriguez, 411 U.S. 475, 489-90 (1973)).

Because the court has now ruled on the motion for preliminary injunctive relief, Anderson's motion seeking notification when the motion is decided [doc. #14] is denied as moot as well.

III. Conclusion

Anderson's motion for waiver of fees [**doc. #6**], motion to amend [**doc. #7**], motion for preliminary injunctive relief [**doc. #8**], motion to waive citations [**doc. #11**] and motion for notification [**doc. #14**] are **DENIED** as moot. Anderson's motions seeking subpoenas [**docs. ## 9, 17**] and motion to reopen and correct [**doc. #10**] are **DENIED** without prejudice.

If Anderson wishes to pursue the claim asserted in Anderson v. Ianotti, et al., No. 3:99cv1861

(JCH), he is directed to file a motion to withdraw this action and file a motion to reopen in Anderson v. Ianotti, et al., accompanied by an amended complaint including all defendants in the case caption and including a brief statement of the facts supporting his claims against each defendant.

Any motion to withdraw this action must be filed within **twenty** days from the date of this order. If Anderson fails to withdraw this action within the time specified, the court will proceed to consider the merits of the claims contained in the June 2002 amended complaint.

SO ORDERED this \_\_\_\_\_ day of October 2002, at Bridgeport, Connecticut.

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Stefan R. Underhill  
United States District Judge