STATE OF MICHIGAN

COURT OF CLAIMS

STACY ANDRE HAWKINS,

Plaintiff,

v Case No. 21-000222-MM

DEPARTMENT OF STATE POLICE, Hon. Michael J. Riordan

Defendant.
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OPINION AND ORDER DENYING PLAINTIFF'S MOTION TO AMEND AND DISMISSING ACTION AS MOOT

This matter was stayed pending the resolution by the United States Court of Appeals for the Sixth Circuit of an appeal in *John Does A-H et al v Whitmer et al*, Docket No. 25-1413/1414. While that matter was pending, the Michigan Supreme Court entered an order in *People v Smith*, Docket No. 168200, holding that retroactively applying the 2021 Sex Offender Registration Act (SORA) amounts to ex post facto punishment for the same reasons the Court determined in *People v Betts*, 507 Mich 527; 968 NW2d 497 (2021), that retroactive application of the 2011 SORA was unconstitutional. Based on this order, defendant removed plaintiff's name from the sex offender registry.

The Court lifted the stay in these proceedings following *Smith* and plaintiff's removal from the registry. Defendant seeks dismissal of this action on mootness grounds, while plaintiff seeks to amend his complaint.

In his original complaint, plaintiff sought only removal from the registry. Because plaintiff has now received that relief, his original claims have been rendered moot. However, on July 14, 2025, plaintiff moved to file an amended complaint adding a claim that the criminal sexual conduct (CSC) statute under which he was convicted in 1989, MCL 750.520d(1)(c), is unconstitutionally vague such that requiring an individual to register as a sex offender amounts to an Ex Post Facto violation. In a second proposed additional count, plaintiff sought to claim that defendant "adopted and maintained an official custom or policy compelling plaintiff to register as a sex offender with deliberate indifference or reckless disregard knowing that doing so would or would likely violate plaintiff's rights" under the Ex Post Facto clause. The amended complaint sought monetary damages in addition to removal from the registry.

Because defendant has long since responded to plaintiff's original complaint and does not consent to plaintiff's request to amend, plaintiff may only file an amended complaint on leave of the Court. MCR 2.118(A)(1)-(2). The Court Rules provide that "[l]eave shall be freely granted when justice so requires." MCR 2.118(A)(2). Leave to amend must be denied when amendment would be futile. *Sanders v Perfecting Church*, 303 Mich App 1, 9-10; 840 NW2d 401 (2013).

Amending the complaint to add plaintiff's proposed vagueness challenge would be an exercise in futility. Plaintiff seeks to include allegations about the events underlying his conviction and the advice he received from counsel during his criminal trial. This is clearly a collateral attack on plaintiff's conviction. A collateral attack occurs when a party uses "a second proceeding to attack a tribunal's decision in a previous proceeding." *Worker's Compensation Agency Dir v MacDonald's Indus Prods, Inc (On Reconsideration)*, 305 Mich App 460, 474; 853 NW2d 467 (2014). Collateral attacks are permitted when the court's decision in the prior proceeding was entered without subject matter or personal jurisdiction, but are otherwise impermissible. *Id*. at 475.

Plaintiff's challenge to his 1989 conviction based on the vagueness of the underlying criminal statute could only be raised on appeal and not in this collateral action.

As the Court previously noted, plaintiff's proposed new custom-or-policy Ex Post Facto challenge also stems from the facts and circumstances surrounding his 1989 conviction. Plaintiff contends that defendant unconstitutionally compelled plaintiff to register despite its knowledge that plaintiff maintained his innocence and passed a polygraph, which plaintiff argues, means he was not a true threat to society. This too is a challenge that could have been raised on a direct appeal and cannot form the basis for a collateral attack. Amendment of the complaint to add this count also would be futile.

Accordingly, the Court DENIES plaintiff's motion to file an amended complaint and DISMISSES plaintiff's complaint in its entirety and with prejudice as MOOT. This is a final order resolving all issues in this action.

Date: 10/22/2024

Michael J. Riordan
Judge, Court of Claims