

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

VAUGHN DAMON WILSON

PLAINTIFF

v.

Civil No. 09-2098

ALMA CITY COURT and
THE STATE OF ARKANSAS

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Vaughn Damon Wilson filed this civil rights action under 42 U.S.C. § 1983.¹ He proceeds *pro se*. Pursuant to 28 U.S.C. § 636, the undersigned issues the following report and recommendation.

BACKGROUND

According to the allegations of the complaint (Doc. 1), on January 1, 2009, at 9:20 p.m. Wilson was stopped by Arkansas State Trooper Patrick A. Schmidt and issued a traffic citation. Schmidt examined Wilson's driver's license which is clearly signed "without prejudice UCC 1-308." Wilson asserts he is "not a commercial entity or subject to the Uniform Commercial Code." He also maintains he is "not a party of or subject to any maritime contract" he "denies that any exists." He states he is "a natural citizen of Arkansas" and "common man of the Sovereign People" which "incidentally makes him a national citizen arising under the original jurisdiction of the de jure Constitution of the United States of 1789." He asserts while he is domiciled in Crawford County he is "not a citizen of, or subject to, any foreign or domestic corporation, municipal corporation, commercial entity or government operating in a commercial capacity." He maintains he was illegally

¹ These allegations are the same as those made in case number 09-cv-2025 which was filed in the Western District of Arkansas on March 19, 2009. Plaintiff motioned to voluntarily dismiss case number 09-cv-2025 on May 26, 2009 (Doc. 11) and that Motion was granted the following day. (Doc. 12).

forced to appear before the City Court of Alma by virtue of the traffic citation. He asserts the City Court of Alma operates as a commercial entity and is without jurisdiction under the Constitution of the United States of 1789 or of the Constitution of the State of Arkansas of 1874 and unlawfully deprived him of his right to a jury trial. Furthermore, he states the City Court of Alma violated his rights by finding him guilty of the traffic violation on January 12, 2009, despite his motion to dismiss and without discovery. Finally, he maintains his right to free access to an appeal was blocked by the City Court of Alma's decision to impose an appeal bond of twice the amount of the fine and further blocked by the \$140 filing fee charged by the Circuit Court.

DISCUSSION

This case is subject to dismissal. First, Wilson's claims against the Alma City Court are subject to dismissal. “[S]tate courts as entities are not vulnerable to a § 1983 suit because they are protected by immunity under the eleventh amendment.” *Mildfelt v. Circuit Court of Jackson County, Mo.*, 827 F.2d 343, 345 (8th Cir. 1987). *See also Foster v. Walsh*, 864 F.2d 416, 418 (6th Cir. 1988)(municipal court is not a person within the meaning of § 1983 and civil rights action may not be maintained against it); *Sampson v. City of Xenia*, 108 F. Supp. 2d 821 (S.D. Ohio 1999)(same).

Second, to the extent Wilson alleges his constitutional rights were violated by the issuance of the traffic citation, the resulting finding that he violated the traffic laws, the fines/court costs assessed, and by various aspects of the proceedings against him, no section 1983 claims are cognizable. In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Supreme Court held that a claim for damages for "allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid" is not cognizable until "the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared

invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck*, 512 U.S. 486-87.

Third, Wilson's claim that his constitutional rights were violated when he was not provided with a jury trial is subject to dismissal. In *Blanton v. City of North Las Vegas*, 489 U.S. 538 (1989), the Supreme Court adhered to its prior precedent that "there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provision." *Id.* (citation omitted). The Court noted that a maximum authorized prison term of more than six months implicated the right to a jury trial, while a term of six months or less created a presumption of no right to a jury trial. *Id.* A defendant facing a maximum term of six months in prison or less could still be entitled to a jury trial but only if he could demonstrate that the additional statutory penalties he faced, viewed in conjunction with the maximum authorized period of incarceration, was so severe that they clearly reflected a legislative determination that the offense in question was a serious one. *Id.*

In this case, Wilson was charged with violation of traffic laws. *Complaint* at page 4. He was found guilty and assessed a fine of \$115. *Attachments to the Complaint* at page 4. There was no possibility of imprisonment and no other statutory penalties. Clearly, the Sixth Amendment right to jury trial did not apply to this traffic citation. *See e.g., Lewis v. United States*, 518 U.S. 322, 325 (1996)("It is well-established that the Sixth Amendment, like the common law, reserves th[e] jury trial right for prosecutions of serious offenses, and that there is a category of petty crimes or offenses which is not subject to the Sixth Amendment jury trial provision.").

Fourth, to the extent Wilson contends he has been deprived of his right to jury trial and his right to appeal because the Arkansas state courts assess a filing fee for appeals, this claim fails. There is no right to a jury trial in city courts in Arkansas. *See e.g., Edwards v. City of Conway*, 300 Ark.

135, 777 S. W. 2d 583 (1989). However, the right of trial by jury remains inviolate when an appeal to the circuit court is pursued where the case is tried *de novo*. See e.g., *Weaver v. State*, 296 Ark. 152, 752 S. W. 2d 750 (1988). A filing fee of \$140 is assessed for initiating a cause of action in circuit court, including appeals. ARK. CODE ANN. § 21-6-403(b)(1) (Supp. 2007). No fee shall be charged if the court allows a person to proceed *in forma pauperis*. ARK. CODE ANN. § 21-6-403(c).

The imposition of filing fees and/or costs associated with filing lawsuits or appeals have never per se been held unconstitutional. See e.g., *United States v. Kras*, 409 U.S. 434, 450 (1973)(The Court has never recognized an "unlimited rule that an indigent at all times and in all cases has the right to relief without the payment of fees."). Filing fees are typically struck down only where they present an insurmountable barrier to the protection of fundamental rights. See e.g., *M.L.B. V. S.L.J.*, 519 U.S. 102 (1996) (Mississippi could not condition an appeal from the termination of parental rights on the payment of a \$2,532.36 record fee). Absent an insurmountable barrier the "correct principle is that reasonable costs may be imposed on persons who want to sue." *Lumbert v. Illinois Dept. of Corrections*, 827 F.2d 257, 259 (7th Cir. 1987).

The Arkansas statutory filing fee provision at issue here does not deny indigent persons access to the circuit courts. The statute incorporates a means by which the filing fee may be waived for indigent persons. The fact that Wilson may have been denied indigent status does not make this procedure unconstitutional.

Fifth, Wilson's claims against the State of Arkansas are subject to dismissal. The claims are barred by the Eleventh Amendment. *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989). "The Eleventh Amendment bars suits against a State by citizens of that same State in federal court." *Williams v. Missouri*, 973 F.2d 599, 599 -600 (8th Cir. 1992) (citing *Papasan v. Allain*, 478 U.S.

265, 276 (1986)). "This bar exists whether the relief sought is legal or equitable." *Id.* (quoting *Papasan*, 478 U.S. at 276). "Congress did not abrogate constitutional sovereign immunity when enacting the law that was to become section 1983." *Burk v. Beene*, 948 F.2d 489, 493 (8th Cir. 1991)(citing *Quern v. Jordan*, 440 U.S. 332, 342 (1979)).

CONCLUSION

Accordingly, I recommend that the case be dismissed because the claims asserted are frivolous, fail to state claims upon which relief can be granted, and seek relief from defendants immune from suit.

Wilson has ten days from receipt of this report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. Wilson is reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 8th day of October 2009.

/s/ J. Marschewski
HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE