

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION at LONDON

DERIC LOSTUTTER,

Plaintiff,

v.

COMMONWEALTH OF KENTUCKY,

Defendant.

Civil Action No. 6:18-277-KKC

ORDER

*** **

Deric Lostutter is a resident of Manchester, Kentucky. Lostutter is also a convicted felon, *see United States v. Deric Lostutter*, No. 5:16-cr-062-DCR (E.D. Ky. 2017), and, as a result, he cannot vote in the state of Kentucky. That is because the Kentucky constitution generally bars convicted felons from voting. *See* KY. CONST. § 145. The only exception to this rule is when the Governor restores the felon’s civil rights, *see id.*, and section 196.045 of the Kentucky Revised Statutes sets forth part of the process through which felons may seek to have their rights restored.

Proceeding without a lawyer, Lostutter recently filed a complaint with this Court in which he claims that KY. REV. STAT. ANN. § 196.045 is unconstitutional. [R. 1]. Lostutter has also moved for, among other things, “immediate and temporary injunctive relief enabling all non-violent felony offenders the right to vote in Kentucky elections” and “[p]ermanent injunctive relief enabling all non-violent felony offenders who have completed their sentence of conviction the right to vote in Kentucky elections.” [R. 2 at 3-4]. Finally, Lostutter has filed a motion for leave to proceed *in forma pauperis*. [R. 3].

As an initial matter, the Court will grant Lostutter's fee motion and allow him to proceed as a pauper. That is because the financial information Lostutter has provided indicates that he lacks enough assets or income to pay the filing and administrative fees in this case.

Turning to Lostutter's "motion for immediate temporary and permanent injunctive relief" [R. 2], it appears that he is seeking a temporary restraining order (TRO) under Rule 65(b) of the Federal Rules of Civil Procedure. The Court, however, will deny that request. Rule 65(b) makes it clear that the Court may issue a TRO only if "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition" and the movant "certifies in writing any efforts made to give notice and the reasons why it should not be required." Ultimately, TROs are only granted in exceptional circumstances; after all, "our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted to both sides of a dispute." *First Tech. Safety Systems, Inc. v. Depinet*, 11 F.3d 641, 650 (6th Cir. 1993).

Here, Lostutter has not clearly explained how he would suffer immediate and irreparable harm by allowing the defendant time to answer or otherwise respond to his complaint. Plus, even if the Court assumes that there is something legally problematic with the way in which felons must seek to have their civil rights restored in Kentucky, Lostutter does not explain how this would justify immediately restoring the voting rights of all non-violent felony offenders, as he requests. Therefore, the Court will deny Lostutter's apparent request for a TRO.

At this point, the defendant must answer or otherwise respond to Lostutter's complaint. Since Lostutter is proceeding as a pauper, the Clerk of the Court and the United States Marshals Service will serve the defendant with a summons and copy of the complaint on Lostutter's behalf. *See Fed. R. Civ. P. 4(c)(3) and 28 U.S.C. § 1915(d).*

Accordingly, it is **ORDERED** as follows:

1. Lostutter's motion for leave to proceed *in forma pauperis* [R. 3] is **GRANTED** and payment of the filing and administrative fees in this case is **WAIVED**.
2. Lostutter's "motion for immediate temporary and permanent injunctive relief" [R. 2] is **DENIED** to the extent that he is seeking a temporary restraining order from this Court.
3. A Deputy Clerk in the London Clerk's Office **shall prepare** a "Service Packet" for the defendant. That Service Packet shall include:
 - a. a completed summons form;
 - b. the complaint [R. 1];
 - c. this Order; and
 - d. a completed USM Form 285.
4. The London Deputy Clerk **shall deliver** the Service Packet to the United States Marshals Service in Lexington, Kentucky, and note the date of delivery in the docket.
5. The United States Marshals Service **shall serve** the Commonwealth of Kentucky by sending the Service Packet by certified or registered mail to:

Commonwealth of Kentucky
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601-3449
6. Lostutter must immediately advise the Clerk's Office of any change in his current mailing address. If Lostutter fails to do so, the Court may dismiss his case.
7. If Lostutter wishes to seek relief from the Court, he must do so by filing a formal motion sent to the Clerk's Office. Every motion that Lostutter files must include a written certification that he has mailed a copy of it to the defendant or the defendant's counsel

and state the date of mailing. The Court will disregard letters sent to the Judge's chambers or motions lacking a certificate of service.

Dated October 31, 2018.



A handwritten signature in cursive script that reads "Karen K. Caldwell".

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY