

United States Court of Appeals
For the Eighth Circuit

No. 15-1485

Frank Lee Franklin,

Plaintiff - Appellant,

v.

Wendy Kelley,

Defendant - Appellee.

Appeal from United States District Court
for the Eastern District of Arkansas - Helena

Submitted: May 06, 2015

Filed: May 20, 2015

[Unpublished]

Before WOLLMAN, BOWMAN, and COLLOTON, Circuit Judges.

PER CURIAM.

Arkansas prisoner Frank Franklin filed a 28 U.S.C. § 2254 petition to challenge his 1991 conviction for rape, which the district court dismissed as time-barred. A month after the habeas action was closed, Franklin sent a pleading to the district court that bore no caption or case number. It was titled “Motion for Appeal (Grievance #: EAM 14-04113)”; Franklin alleged deliberate indifference and retaliation by a prison

officer for failing to give Franklin his “correct food.” Despite having no relation to Franklin’s habeas claims, this pleading was filed as a notice of appeal in the recently closed habeas action.

Because this pleading clearly contains civil rights allegations and makes no reference to Franklin’s habeas claims, it should not have been construed as a notice of appeal in the habeas case. Rather, it should have been filed as a new 42 U.S.C. § 1983 civil rights action, the proper avenue in which to challenge conditions of confinement. *Cf. Preiser v. Rodriguez*, 411 U.S. 475, 499-500 (1973).

Accordingly, we remand the matter to the district court, and direct that Franklin’s “Motion for Appeal” be filed as a new civil rights action, effective the date the pleading initially was received in the district court.
