

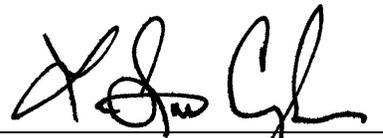


asserting that it should not be reclassified under 42 U.S.C. § 1983. (Doc. 3). He argued the taking of his property was not while he was incarcerated, but on the day of the arrest, and Alabama and federal law are clear that the narcotics agents and Circuit Court of Cherokee County did not have jurisdiction to do what that they did, citing the Alabama controlled substances forfeiture statute at Ala. Code § 20-2-93. (*Id.*)

The law of habeas corpus is also clear. A court “shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court *only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.*” 28 U.S.C. § 2254 (emphasis added). A § 1983 claim, on the other hand, creates a civil action for the deprivation of rights under federal law and the U.S. Constitution by those who are acting under color of law, which will support a claim for damages or injunctive relief. *See* 42 U.S.C. § 1983.

Hawkins does not assert he is in custody in violation of the law but that his property was taken in violation of federal and state law. The claim he alleges is one under 42 U.S.C. § 1983 and not 28 U.S.C. § 2254. Hawkins has failed to show cause why his claim should not be reclassified under 42 U.S.C. § 1983 and has refused to file an amended complaint with a filing fee or an application to proceed *in forma pauperis*; therefore, his petition is due to be DISMISSED without prejudice. A separate order will be entered.

Done this 18th day of April 2014.



L. SCOTT COOGLER  
UNITED STATES DISTRICT JUDGE

[160704]