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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL SEAN HAUGHEY,	)	
	)	
Plaintiff(s),	)	No. C 06-1675 CRB (PR)
	)	
vs.	)	ORDER OF DISMISSAL
	)	
MONTEREY COUNTY SUPERIOR	)	
COURT,	)	
	)	
Defendant(s).	)	
_____	)	

Plaintiff, a prisoner at the Monterey County Jail, has filed a pro se complaint under 42 U.S.C. § 1983 attacking the validity of a sentence imposed by the Monterey County Superior Court. Plaintiff specifically alleges that the court violated his constitutional rights when it imposed a 365-day prison term, rather than the home detention recommended by his probation officer.

Plaintiff's action must be dismissed without prejudice because it is well-established that any claim by a prisoner that would necessarily imply the invalidity of his conviction or continuing confinement, as plaintiff's claim would here, must be brought in a habeas petition. See Nelson v. Campbell, 541 U.S. 637, 642-44 (2004); see also Calderon v. Ashmus, 523 U.S. 740, 747 (1998) (claim by a prisoner attacking the fact or duration of his confinement must be

1 brought under the habeas sections of Title 28 of the United States Code). And  
2 for essentially the same reasons, a claim for damages would have to be dismissed  
3 without prejudice as well. See Heck v. Humphrey, 512 U.S. 477, 486-487 (1994)  
4 (claim for damages for unlawful incarceration or sentence is not cognizable under  
5 § 1983 until the conviction or sentence at issue is invalidated).

6 For the foregoing reasons, plaintiff's request to proceed in forma pauperis  
7 is DENIED and the complaint is DISMISSED without prejudice under the  
8 authority of 28 U.S.C. § 1915A(b).

9 The clerk shall enter judgment in accordance with this order, terminate all  
10 pending motions as moot, and close the file. No fee is due.

11 SO ORDERED.

12 DATED: March 6, 2006

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15 CHARLES R. BREYER  
16 United States District Judge  
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