

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

3 HORACE BELL,

No. C 08-03770 CW (PR)

4 Petitioner,

ORDER OF DISMISSAL WITH LEAVE
TO AMEND

5 v.

6 A. HEDGPETH, Warden,

7 Respondent.
8 _____/

9 This case was commenced when Petitioner filed a federal habeas
10 corpus form, which he labeled "Petition for a Writ of Mandate." He
11 did not complete the habeas corpus form; instead he wrote, "see
12 attachment" at the top of each page. He attached a confusing mix
13 of documents, including various documents related to his state
14 court cases. The Court has reviewed these documents and cannot
15 discern the basic facts surrounding the petition and Petitioner's
16 incarceration. Therefore, the Court cannot fairly evaluate the
17 petition in its present state, nor can the Court be certain that
18 Petitioner intended to file a petition for a writ of habeas corpus
19 pursuant to 28 U.S.C. § 2254. Petitioner has also filed a motion
20 for leave to proceed in forma pauperis (IFP).

21 Accordingly, the Court DISMISSES the petition with leave to
22 amend in order to allow Petitioner an opportunity to file a proper
23 federal habeas petition on the enclosed habeas corpus form.
24 Petitioner must clearly state his grounds for relief and whether he
25 is challenging his criminal conviction and sentence or the
26 execution of his sentence.

27 If Petitioner wishes to challenge the conditions of his
28 confinement, a federal civil rights claim under 42 U.S.C. § 1983,
rather than a federal habeas petition, is the proper way to raise

1 such claims. See Badaea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991).
2 The Court notes that Petitioner is incarcerated at Kern Valley
3 State Prison (KVSP) in Delano, California, which lies within the
4 venue of the Eastern District of California. See 28 U.S.C.
5 § 84(b). If Petitioner seeks damages from KVSP prison officials
6 for conditions of his confinement at KVSP, venue is not proper in
7 this district. See 28 U.S.C. § 1391(b). Therefore, any claims
8 relating to the conditions of Petitioner's confinement at KVSP
9 should be filed in the United States District Court for the Eastern
10 District of California.

11 CONCLUSION

12 For the foregoing reasons, leave to proceed IFP is GRANTED,
13 and the petition is DISMISSED WITH LEAVE TO AMEND. Within thirty
14 (30) days of the date of this Order, Petitioner shall file an
15 amended petition on the enclosed habeas corpus form. Petitioner
16 must write the case number for this action -- Case No. C 08-03770
17 CW (PR) -- on the form and complete all sections of the form.

18 Failure to file a completed habeas corpus form within the
19 thirty-day deadline shall result in dismissal of this action
20 without prejudice.

21 The Clerk of the Court shall send Petitioner a blank habeas
22 corpus form along with his copy of this Order.

23 This Order terminates Docket no. 3.

24 IT IS SO ORDERED.

25 DATED: 6/12/09



26 CLAUDIA WILKEN
27 United States District Judge
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 HORACE BELL,

5 Plaintiff,

6 v.

7 A HEDGPETH et al,

8 Defendant.

Case Number: CV08-03770 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on June 12, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Horace A. Bell #J-42454 w/HC form
16 P O Box 6000
17 Delano, CA 93216

Dated: June 12, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk