

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

1 09CV02662

BnB

NOV 13 2009

Civil Action No. _____

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

GREGORY C. LANGHAM
CLERK

JERRY LEWIS DEDRICK,

Plaintiff/Petitioner,

v.

J. M. WILNER, Warden,
BUREAU OF PRISONS,
B. GREENWOOD, AHSA,
B. CINK, P.A.,
MRS. REICHERT, P.A., and
AW-L. MILUSNIC, et al.,

Defendants/Respondents.

ORDER DIRECTING CLERK TO COMMENCE A CIVIL ACTION,
CONSTRUING HABEAS CORPUS ACTION AS A **BIVENS** ACTION,
AND INSTRUCTING APPLICANT TO CURE DEFICIENCIES

Jerry Lewis Dedrick is a prisoner in the custody of the United States Bureau of Prisons (BOP), who currently is incarcerated at USP Florence. Mr. Dedrick, acting *pro se*, filed a letter to the court and a pleading titled "Writ of Habeas Corpus." He also filed an "Application to Proceed In Forma Pauperis, Supporting Documentation and Order." Mr. Dedrick has failed to file either the Writ of Habeas Corpus or the request to proceed *in forma pauperis* on a Court-approved form. The Court, however, has determined that the action is deficient for other reasons as described in this Order. Notwithstanding the deficiencies, the Clerk of the Court will be directed to commence a civil action. Any

papers that Mr. Dedrick files in response to this Order must include the civil action number on this Order.

The Court has reviewed the Writ of Habeas Corpus and finds that Mr. Dedrick is asserting civil rights claims rather than habeas corpus claims. Mr. Dedrick complains that he is not receiving adequate medical care. “The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” **See Preiser v. Rodriguez**, 411 U.S. 475, 484 (1973). It is well established in the Tenth Circuit that § 2241 is an improper vehicle for a prisoner to challenge the conditions of his confinement. **See McIntosh v. United States Parole Comm’n**, 115 F.3d 809, 811-12 (10th Cir. 1997). Generally, a federal prisoner’s challenge to his conditions of confinement is cognizable under **Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics**, 403 U.S. 388 (1971), *see, e.g., Richards v. Bellmon*, 941 F.2d 1015, 1018 (10th Cir. 1991), or pursuant to 28 U.S.C. §§ 1331 or 1361, *see Simmat v. United States Bureau of Prisons*, 413 F.3d 1225, 1235-36 (10th Cir. 2005). Even liberally construing Mr. Dedrick’s claims, he has failed to allege a valid factual basis for a § 2241 action.

Mr. Dedrick will be directed to complete the proper, Court-approved form used for filing a prisoner complaint and submit the completed form to the Court if he wishes to pursue his claims. Mr. Dedrick must allege, simply and concisely, the specific claims for relief he is asserting and against whom those claims are asserted. Mr. Dedrick also will be required to submit his request to proceed *in forma pauperis* on a proper Court-approved form. Accordingly, it is

ORDERED that the Clerk of the Court commence a civil action in this matter. It is

FURTHER ORDERED that the action is construed as a civil rights action filed pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), or 28 U.S.C. § 1331, rather than a habeas corpus action filed pursuant to 28 U.S.C. § 2241. It is

FURTHER ORDERED that **within thirty days from the date of this Order** Mr. Dedrick shall complete and file a Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. It is

FURTHER ORDERED that the Clerk of the Court mail to Mr. Dedrick two copies of the following forms: Prisoner Complaint; Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. It is

FURTHER ORDERED that if Mr. Dedrick fails to comply with this Order, **within thirty days from the date of this Order**, the action will be dismissed without further notice. It is

FURTHER ORDERED that the Court will not review the merits of Mr. Dedrick's claims until he has complied with this Order.

DATED at Denver, Colorado, this 12th day of November, 2009.

BY THE COURT:



BOYD N. BOLAND
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No.

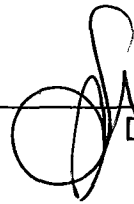
09CV02662

James Lewis Dedrick
Reg No. 27140-180
US Penitentiary
P.O. Box 7000
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. §1915 and Prisoner Complaint forms** to the above-named individuals on 11/13/09

GREGORY C. LANGHAM, CLERK

By: _____



Deputy Clerk