

FILED

MAR - 5 2009

**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Lorenzie F. Gaston,)
)
Plaintiff,)
)
v.)
)
Pinellas County State Court,)
)
Defendant.)

Civil Action No. **09 0433**

MEMORANDUM OPINION

This matter comes before the court on the plaintiff's *pro se* complaint and application to proceed *in forma pauperis*. The Court will grant the application to proceed *in forma pauperis* and will dismiss the complaint for lack of jurisdiction.

Plaintiff is an inmate in the Taylor Correctional Institution in Perry, Florida, serving a sentence imposed by the Pinellas County State Court. Notwithstanding that the *pro se* submission is titled a complaint, it appears to attack the validity of the state court conviction, alleging actual innocence, ineffective assistance of counsel, and wrongful incarceration. As such, it will be construed as a petition for *habeas* review under 28 U.S.C. § 2254.

Federal court review of state convictions is available under 28 U.S.C. § 2254 but only after the exhaustion of available state remedies. *See* 28 U.S.C. §2254(b)(1). Thereafter, "an application for a writ of habeas corpus [] made by a person in custody under the judgment and sentence of a State court . . . may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced [petitioner] and each of such district courts shall have concurrent jurisdiction to entertain the application." 28 U.S.C. § 2241(d). To the extent that petitioner has

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exhausted his state remedies, his federal recourse lies in the United States District Court for the Middle District of Florida.

A separate final order accompanies this memorandum opinion.

Date:

2/16/03

Ellen S. Hurda
United States District Judge