

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

Peter Hernandez,

Petitioner,

vs.

Case No. 2:06-cv-608-FtM-29SPC

Charlotte Correctional Institution  
Staff,

Respondent.

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**OPINION AND ORDER**

This matter comes before the Court upon review of Petitioner's Petition for Writ of Mandamus (Doc. #1), filed November 6, 2006, in the United States District Court for the Middle District of Florida, Orlando Division, which was subsequently transferred to this Court. Petitioner alleges that an officer from Charlotte Correctional Institution ("CCI") racially discriminated against Petitioner by issuing him a false disciplinary report. Petitioner seeks mandamus relief, requesting that the Court direct CCI to: follow specific sections of the rules established by the Florida Department of Corrections, abide by Florida law, reverse the disciplinary action, and restore Petitioner's jail record. (Doc. #1

Writs of mandamus have been abolished in federal practice pursuant to Federal Rule of Civil Procedure 81(b), although United States District Courts have jurisdiction in actions in the nature

of mandamus pursuant to 28 U.S.C. § 1361. While federal courts have jurisdiction over mandamus actions that seek to compel a federal official to perform a specific duty, 28 U.S.C. § 1361, federal courts have no general power to compel performance by a **state** official, or a private corporation in privity of contract with a state agency, where mandamus is the only relief sought. Russell v. Knight, 488 F.2d 96, 97 (5th Cir. 1973); Moye v. Clerk, DeKalb County Superior Court, 474 F.2d 1275 (5th Cir. 1973); Lamar v. 118th Judicial District Court of Texas, 440 F.2d 383 (5th Cir. 1971). Here, Petitioner requests that the Court compel performance by a state correctional facility. Further, to the extent Petitioner claims violations of his constitutional rights, Petitioner may initiate a new action by filing a civil rights complaint form pursuant to 42 U.S.C. § 1983.

ACCORDINGLY, it is hereby


**ORDERED:**

1. Petitioner's Petition for Writ of Mandamus (Doc. #1) is **DENIED**.

2. The **Clerk of Court** shall: (1) terminate any pending motions; (2) enter judgment accordingly; (3) close this case.

3. The **Clerk of Court** is further directed to send Petitioner a civil rights Complaint form.

**DONE AND ORDERED** in Fort Myers, Florida, on this 17th day of November, 2006.

  
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JOHN E. STEELE  
United States District Judge

SA: alj  
Copies: All Parties of Record