

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

EARNEST HEARING,	:	
	:	
Plaintiff	:	
	:	
VS.	:	
	:	
Warden WENDY SQUIRES, <i>et al.</i> ,	:	NO. 5:07-cv-19 (HL)
	:	
Defendants	:	<u>ORDER</u>
_____	:	

Pro se plaintiff **EARNEST HEARING**, an inmate at Rivers State Prison in Hardwick, Georgia, has filed what is captioned as a petition under 28 U.S.C. § 2241, which is a habeas statute. He also seeks leave to proceed *in forma pauperis*.

Plaintiff’s complaint concerns overcrowding at Rivers State Prison and his being prohibited from participating in unspecified rehabilitative programs, apparently because of his unspecified disability. Plaintiff seeks injunctive relief and release from custody.

“Federal law opens two main avenues to relief on complaints related to imprisonment: a petition for habeas corpus ... and a complaint under ... 42 U.S.C. § 1983.” *Muhammad v. Close*, 124 S. Ct. 1303 (2004). Here, the habeas corpus petition is an improper vehicle to seek relief from conditions of confinement, because the habeas petition's sole purpose is to seek release from confinement. Even if plaintiff were to prove his allegations regarding overcrowding and being prohibited from participating in rehabilitative programs, plaintiff would not be eligible for release from prison. Hence, the Court finds that plaintiff is not

entitled to habeas corpus relief. Accordingly, plaintiff's complaint must be dismissed.

If plaintiff wishes to bring a civil rights complaint under the appropriate statute, 42 U.S.C. § 1983, he should complete the enclosed sets of the Court's form and return them to the Court. Should plaintiff complete the forms and return them to the Court, his complaint will be assigned a new civil action number and will be considered by the Court. The Clerk's Office is **DIRECTED** to send petitioner the appropriate 42 U.S.C. § 1983 forms.

Conversely, if plaintiff's intent is to pursue a challenge to his confinement or sentence, he should file a petition for writ of habeas corpus under 28 U.S.C. § 2254. Should plaintiff decide to file a habeas petition, said petition must be filed in the United States District Court for the Northern District of Georgia. Such district is the judicial district where Henry County, Georgia (place of plaintiff's conviction) is located. *See* 28 U.S.C. § 90(a)(2). Before filing such a petition, however, petitioner must insure that he has exhausted his state remedies, either by way of direct appeal or state habeas relief.

In light of the above, the present action under 28 U.S.C. § 2241 is hereby **DISMISSED** without prejudice.

SO ORDERED, this 31st day of January, 2007.

/s/ Hugh Lawson
HUGH LAWSON
UNITED STATES DISTRICT JUDGE

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