

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

HENRY L. LESTER	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	No. 5:11-cv-480 (CAR)
GEORGIA DEPARTMENT OF	:	
CORRECTIONS, ALEXIS CHASE,	:	
CALVIN RAMSEY, and EDWARD	:	
H. BURNSIDE,	:	
	:	
Defendants.	:	
_____	:	

ORDER

Before the Court is *pro se* Plaintiff Henry L. Lester’s Notice of Removal [Doc. 1]. Plaintiff filed a state court “mandamus civil action” in the Baldwin County Superior Court on July 8, 2008, for alleged federal and state constitutional violations. On December 2, 2011, Plaintiff filed a Notice of Removal of his state court action.

The federal removal statute, in pertinent part, provides:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the *defendant or the defendants* to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a) (emphasis added). In accordance with the plain language of this statute, only a defendant may remove an action from state to federal court. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 104-05, 61 S.Ct. 868 (1941). The purpose of restricting the right of removal to a defendant is to “restrict ... removal to those who had no choice in selection of a forum.” Escambia Cnty. Bd. of Educ. v. Benton, 358 F. Supp. 2d 1112, 1119 (S.D. Ala. 2005) (quotation and citation omitted). Further, under 28 U.S.C. § 1446(c)(4), “[i]f it clearly appears on the face of the notice ... that removal should not be permitted, the court shall make an order for summary remand.”

Here, Plaintiff is not a defendant in the state action and therefore may not remove that action to this Court. Plaintiff’s case is hereby **DISMISSED** and this case is **REMANDED** to the Superior Court of Baldwin County.

SO ORDERED, this 9th day of January, 2012.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

LMH