

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

**DARRAL BELL**

**PLAINTIFF**

**VS.**

**CIVIL ACTION NO. 3:07cv609-DPJ-JCS**

**STATE OF MISSISSIPPI**

**DEFENDANT**

**ORDER**

Plaintiff is a state prisoner, having been convicted of manslaughter in the Circuit Court of Amite County, Mississippi, in 2006. His conviction was affirmed on appeal. He filed this civil action, through his attorney, seeking damages pursuant to 42 U.S.C. § 1983 and related statutes as well as habeas relief. Section 1983 relief and habeas relief may not be pursued in the same action; when a complaint contains both types of claims, the proper course is for the district court to separate the claims. *Orellana v. Kyle*, 65 F.3d 29, 31 (5<sup>th</sup> Cir. 1995). Accordingly, the Clerk is directed to open a new habeas file and file the complaint in this action as the originating document in the new action. Within ten days of the opening of the new file, Bell shall file pay the filing fee of \$5.00 and shall file an amended habeas petition conforming to the requirements of Rule 2 of the Rules Governing Section 2254 Cases. The petition will then be reviewed pursuant to Rule 4, and, if the petition is not dismissed, the court will order the respondent to file an answer, motion or other response.

The present case shall continue as one brought pursuant to section 1983.

SO ORDERED this the 24<sup>th</sup> day of June, 2009.

/s/ James C. Sumner  
UNITED STATES MAGISTRATE JUDGE