

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

WILLIAM T. DAVIS, #110338

PETITIONER

VERSUS

CIVIL ACTION NO. 5:09cv134DCB-MTP

STATE OF MISSISSIPPI, et al.

RESPONDENTS

MEMORANDUM OPINION AND ORDER

This cause is before the court, sua sponte, for consideration of dismissal. Petitioner William T. Davis is an inmate housed at the Central Mississippi Correctional Facility, Pearl, Mississippi. On August 17, 2009, this court received a document referenced as “Petition Under 28 U.S.C. 2254 for Writ of Corpus by a Person in State Custody in Miss. Evidentiary Hearing Requested.” There was not a cover letter included explaining the reason the petitioner had mailed this document to this court. It was determined that the petitioner was attempting to file a new civil action for habeas relief. Thus, the petition was filed and assigned the above referenced civil action number. The next day, on August 18, 2009, this court received correspondence from the petitioner stating that he had, through the law library, mailed the document to be filed in civil action number 5:09cv109DCB-MTP which is presently pending in this court. The petitioner states in his correspondence dated August 13, 2009, that he was unable to find the case number to place on the document when he submitted same to the law library to be mailed to this court. Therefore, the petition for instant civil action, 5:09cv134DCB-MTP, should have been filed as a brief in support of his petition in 5:09cv109DCB-MTP and the instant civil action should not have been opened. Consequently, the instant civil action, 5:09cv134-DCB-MTP, will be dismissed without prejudice since it was inadvertently filed and opened as a new civil action.

The dismissal of the instant civil action does not reflect an opinion of this court concerning the merits of the pending action in 5:09cv109DCB-MTP. Accordingly, it is

ORDERED:

1. That this civil action is dismissed without prejudice as being inadvertently filed and opened as a new civil action.
2. That the clerk is directed to file a copy of the petition, attachments and exhibits filed in this civil action number 5:09cv134DCB-MTP in civil action number 5:09cv109DCB-MTP as a brief in support of the petition.
3. That the clerk is directed mail a copy of this Memorandum Opinion and Order to the respondent in civil action number 5:09cv109DCB-MTP along with a copy of the petition, attachments and exhibits filed in civil action 5:09cv134DCB-MTP.
4. **That plaintiff's failure to advise this court of a change of address or failure to timely comply with any order of this court will be deemed as a purposeful delay and contumacious act by the plaintiff and may result in this cause being dismissed without prejudice and without further notice to the plaintiff.**

A final judgment in accordance with this Memorandum Opinion and Order will be entered.

SO ORDERED, this the 24th day of August, 2009.

s/David Bramlette

UNITED STATES DISTRICT JUDGE