

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Anthony Carpenito

v.

Civil No. 09-cv-021-SM

William Wrenn, Commissioner,
New Hampshire Department of Corrections

O R D E R

Before the Court is Anthony Carpenito's petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. The matter has been referred to me and is presently pending preliminary review. See United States District Court District of New Hampshire Local Rule 4.3(d)(2) (authorizing Magistrate Judge to conduct preliminary review of pleadings filed by incarcerated plaintiffs proceeding pro se and in forma pauperis); 28 U.S.C. § 1915A(a) (same); Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts (requiring initial review of habeas petition to determine whether it is facially valid and may be served).

Federal habeas relief is only available to challenge the fact or length of an inmate's confinement. See Preiser v. Rodriguez, 411 U.S. 475, 489-99 (1973); Wolff v. McDonnell, 418 U.S. 539, 554 (1974). Upon reviewing the file, I have determined that it contains a number of claims properly raised in a civil

rights action brought pursuant to 42 U.S.C. § 1983, which is the appropriate way to challenge conditions of confinement or other civil rights violations that took place during Carpenito's incarceration. Upon completion of my preliminary review in this matter, I will recommend that such claims be dismissed from the habeas action.

The Clerk's office is directed to open a new § 1983 prisoner civil rights case and to docket Carpenito's complaint, and addenda thereto, (document nos. 1 & 6 - 8) as the complaint in the new case, to be entitled Anthony Carpenito v. William Wrenn, Commissioner, New Hampshire Department of Corrections, et al..

The Clerk's office may also rely on Carpenito's motion to proceed in forma pauperis (document no. 2), his certificate of custodial institution (document no. 4) and his financial affidavit (document no. 5) filed in this case, as well as my previous grant of the motion to proceed in forma pauperis. Once the civil

rights case is opened, the matter should be forwarded to me for preliminary review without delay.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: February 25, 2009

cc: Anthony Carpenito, pro se