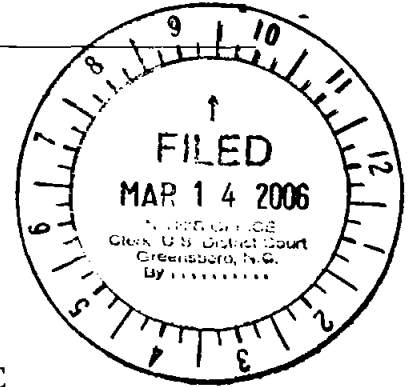


**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

Gabriel Geraud Henderson,)
)
Petitioner,)
)
v.)
)
United States of America,)
)
Respondent.)

1:06CV00237

1:99CR338-1



**RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a federal prisoner, has submitted an "affidavit to grant defendant motion to compel for specific performance" and a memorandum. He alleges that the government breached his plea agreement at sentencing. In order to grant any relief, petitioner's submission would have to be treated as a request for habeas relief pursuant to 28 U.S.C. § 2255. See Gonzalez v. Crosby, ___ U.S. ___, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005); United States v. Winestock, 340 F.3d 200 (4th Cir. 2003) (Rule 60(b) motion). As such, petitioner's pleading is defective because he has failed to file his claims on the proper Section 2255 forms. See Rules Governing Section 2255 Proceedings Rule 2(b).

IT IS THEREFORE ORDERED that the clerk send petitioner a copy of this recommendation, forms for filing Section 2255 actions in this Court, and instructions.

IT IS THEREFORE RECOMMENDED that petitioner's "affidavit" be construed as an attempt by petitioner to file a Section 2255 action and dismissed without prejudice to petitioner filing a new action on the proper forms.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: March 14, 2006