

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

KELVIN SELLERS, )  
)  
Petitioner, )  
)  
v. ) 1:15CV306  
)  
STATE OF NORTH CAROLINA, et al., )  
)  
Respondent. )

ORDER AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner of the State of North Carolina, submitted a document styled as a lawsuit against the State of North Carolina entitled together with a \$5.00 filing fee. Even though Petitioner has not used the correct forms for a habeas corpus petition under 28 U.S.C. § 2254, it appears that Petitioner seeks primarily to attack his state court criminal convictions.<sup>1</sup> The document he filed is not a recognizable method for achieving this goal. Instead, the proper avenue for such an attack is ordinarily a petition for habeas corpus. For this reason, the Court will construe the submission as a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. However, Petitioner already filed one habeas petition which is pending in this Court at this time. [No. 1:14CV988.] Petitioner may not file an additional habeas petition regarding the same convictions. The proper course of

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<sup>1</sup> Petitioner mixes his attack on his conviction with other allegations regarding prison conditions. Those claims are not proper in a habeas action, but must be brought instead in a civil rights action under 42 U.S.C. § 1983, which requires its own forms, as well as either a \$400.00 filing fee or an application to proceed in forma pauperis. If Petitioner wishes to file such an action, he should request the proper forms from the Clerk.

action is to file a motion to amend the pending petition if Petitioner wishes to add claims and receive permission to do so from the Court.

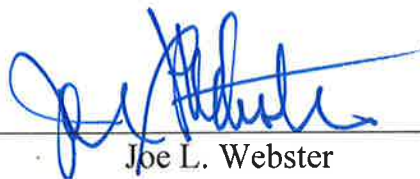
Because of this pleading failure, the Petition should be filed and then dismissed, without prejudice to Petitioner moving to amend his pending habeas petition in case 1:14CV988.

*In forma pauperis* status will be granted for the sole purpose of entering this Order and Recommendation and the Clerk will return Plaintiff's \$5.00 filing fee.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation and that the Clerk return the \$5.00 filing fee to Plaintiff.

IT IS RECOMMENDED that this action be filed, but then dismissed *sua sponte* without prejudice to Petitioner moving to amend his pending habeas petition in case 1:14CV988.

This, the 13<sup>th</sup> day of April, 2015.



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Joe L. Webster  
United States Magistrate Judge