

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:06CV54-01-MU

MAURICE BYRD,)
)
 Plaintiff,)
)
 v.)
)
 STATE OF NORTH CAROLINA, et al.,)
)
 Defendants.)
_____)

ORDER

THIS MATTER is before the Court upon Plaintiff’s Complaint Pursuant to 42 U.S.C. § 1983, filed February 9, 2006.

Plaintiff has filed a Complaint on a 42 U.S.C. § 1983 form asserting that the North Carolina Court of Appeals had abused its discretion by dismissing his state court criminal case without comment after he had “colorably challenged the validity of his conviction.” For a remedy, Plaintiff seeks to have this Court construe his § 1983 Complaint as a habeas corpus action and order his state conviction vacated and remanded to the state trial court for resentencing.

It is unclear to this Court why a plaintiff would file a § 1983 Complaint and ask that it be construed as a habeas petition. As Plaintiff is seeking to overturn his state court conviction or sentence, he is correct that his claim is most properly brought as a habeas claim rather than a § 1983 claim. However, the North Carolina Court of Appeals order attached to his Complaint reveals that Plaintiff was convicted and sentenced in Wake County. Pursuant to the provisions of Section 2241(d) of Title 28 of the United States Code, and in accordance with a joint order of the United

States District Courts for the Eastern, Middle, and Western Districts of North Carolina, a habeas action should be filed in the United States District Court for the Eastern District of North Carolina, the district within which the state court was held which convicted and sentenced Plaintiff. Consequently, any habeas action pursuant to 28 U.S.C. § 2254 filed by Plaintiff must be done so in the United States District Court for the Eastern District of North Carolina. Consequently, because a habeas filing would be dismissed for venue reasons by this Court, this Court declines to go through the motions of converting Plaintiff's filing.

THEREFORE IT IS HEREBY ORDERED that Plaintiff's Complaint pursuant to 42 U.S.C. § 1983 is **DISMISSED**.

Signed: February 13, 2006



Graham C. Mullen
United States District Judge

