

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:06CV63-01-MU

CLARENCE EDWARD WILLIAMS, )  
 )  
 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 14, 2006.

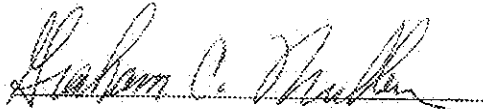
Plaintiff has filed a Complaint on a 42 U.S.C. § 1983 form asserting that the North Carolina Supreme Court had abused its discretion by dismissing without comment his motion for reconsideration of petition for discretionary review in his state court criminal case when he had "colorably complained that the trial court erred in approval of his plea admitting the habitual felon status on the grounds that the prosecutor never charged, indicted nor arraigned him on that offense." For a remedy, Plaintiff seeks to have this Court order the withdrawal of his habitual felon admission and remand his case for resentencing.

Because Plaintiff is seeking to overturn his state court conviction or sentence, his claim is most properly brought as a habeas claim rather than a § 1983 claim. However, as indicated on the Supreme Court's Order attached by Plaintiff to his Complaint, Plaintiff was convicted and sentenced in Nash 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 24, 2006



Graham C. Millen  
United States District Judge