

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED
JUN 07 2006
JOHN F. CONCORAN, CLERK
BY: DEPUTY CLERK

STEVEN A. BURNETTE,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

Civil Action No. 7:06-cv-00340

MEMORANDUM OPINION


By: Hon. James C. Turk
Senior United States District Judge

Plaintiff Steven A. Burnette, a federal inmate proceeding pro se, has filed pleadings styled as a petition for a writ of coram nobis and a motion for downward departure. Inasmuch as the motions complain that Burnette has been repeatedly assaulted in federal prison, the clerk's office conditionally filed his pleadings as a civil rights action, pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), with jurisdiction vested under 28 U.S.C. § 1331. The court now believes the action must be dismissed without prejudice, as plaintiff is not seeking relief that is available under Bivens.

Upon review of the pleadings, the court concludes that the motions should instead be docketed in Burnette's criminal case, No. 7:99-cr-00109, as a motion for compassionate release/motion for reduction of sentence. Burnette is not arguing that prison officials violated his constitutional rights in relation to the assaults by other inmates, nor is he arguing that he is entitled to injunctive or monetary relief. Rather, he is arguing that because of severe injuries he has received as a result of these assaults by other inmates and his ongoing fear of future assaults, his sentence should be reduced to time served, and he should receive a compassionate release from prison. These are not arguments appropriately raised under Bivens. Therefore, the court will dismiss this action without prejudice and direct the clerk to file Burnette's motions in his criminal case. An appropriate order shall be issued this day.

The Clerk is directed to send certified copies of this memorandum opinion and the accompanying order to plaintiff.

ENTER: This 6th day of June, 2006.



Senior United States District Judge