

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Michael Allen v. S.V.S.P. - P.I.P.

Allen · No. 24-cv-03197-PCP · Decided March 31, 2025

OPINION

Allen v. S.V.S.P. - P.I.P.

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 MICHAEL ALLEN, Case No. 24-cv-03197-PCP 8 Plaintiff, ORDER REQUIRING
PETITIONER

TO FILE A RESPONSE, AND

9 v. DENYING MOTION TO PROCEED IN

FORMA PAUPERIS

10 S.V.S.P. - P.I.P.,

Re: Dkt. No. 4 Defendant. 11 12 13 Petitioner Michael Allen, a state prisoner proceeding pro se, filed a pleading entitled 14 “petition for writ of habeas corpus.” Dkt. No. 1. Upon review, the pleading concerns the 15 conditions of Mr. Allen’s confinement—specifically, a potential prison transfer—rather than his 16 conviction. See id. 17 Claims regarding conditions of confinement cannot proceed in this habeas action. 18 “Federal law opens two main avenues to relief on complaints related to imprisonment: a petition 19 for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871, Rev. 20 Stat. § 1979, as amended, 42 U.S.C. § 1983.” Hill v. McDonough, 547 U.S. 573, 579 (2006) 21 (citation omitted). The Ninth Circuit has held that if the claim “does not lie at the ‘core of habeas 22 corpus,’ it may not be brought in habeas corpus but must be brought, ‘if at all,’ under 23 § 1983.” Nettles v. Grounds, 830 F.3d 922, 931 (9th Cir. 2016) (emphases added, citations 24 omitted). See also Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003) (“habeas jurisdiction is 25 absent, and a § 1983 action proper, where a successful challenge to a prison condition will not 26 necessarily shorten the prisoner’s sentence”). 27 Here, Mr. Allen’s claim regarding a potential prison transfer should be brought in an action 1 conditions of his confinement as a civil rights action under 42 U.S.C. § 1983. See Wilwording v. 2 Swenson, 404 U.S. 249, 251 (1971). Before doing so, a district court must advise the prisoner of 3 the consequences of construing a habeas petition as a civil rights complaint and provide an 4 opportunity to withdraw or amend the pleading. See Nettles, 830 F.3d at 936. 5 On or before May 30, 2025, Mr. Allen must file a written response indicating whether he 6 wishes (i) the

Court to convert this § 2254 habeas action into one filed under 42 U.S.C. § 1983; or 7 (ii) for the Court to dismiss the remainder of the Petition. If Mr. Allen prefers neither option, he 8 may file a notice of voluntary dismissal as his response to this order. 9 Before he chooses option (i), to ask the Court to convert this action to a civil rights action 10 under 42 U.S.C. § 1983, Mr. Allen should be aware of the following. The filing fee for a habeas 11 petition is five dollars; for civil rights cases, however, the fee is now \$405.00 (\$350.00 if pauper 12 status is granted) and under the Prisoner Litigation Reform Act the prisoner is required to pay it, 13 even if granted in forma pauperis status, by way of deductions from income to the prisoner's trust 14 account. See 28 U.S.C. § 1915(b). A prisoner who might be willing to pay the filing fee for a 15 habeas petition might feel otherwise about a civil rights complaint for which the \$405.00 fee 16 would be deducted from income to his prisoner account. Also, a civil rights complaint which is 17 dismissed as malicious, frivolous, or for failure to state a claim would count as a "strike" under 28 18 U.S.C. § 1915(g), which is not true for habeas cases. When an inmate accrues three "strikes," he is 19 barred from in forma pauperis status for all future cases. 20 If Mr. Allen chooses option (i), the Court then will set a deadline for him to file a 21 complaint under 42 U.S.C. § 1983, and to file a complete application to proceed in forma pauperis 22 (or pay the full filing fee). He may also move for appointment of pro bono counsel at that time.

23 I. CONCLUSION

24 On or before May 30, 2025, Mr. Allen must file a written response indicating whether he 25 wishes (i) the Court to convert this § 2254 habeas action into one filed under 42 U.S.C. § 1983; or 26 (ii) for the Court to dismiss the remainder of the Petition. Failure to file a response in 27 accordance with this order will result in a finding that further leave to amend would be] Mr. Allen's in forma pauperis application is DENIED because the initial assessment 2 || would exceed the filing fee for a habeas action. See 28 U.S.C. § 1915(b)(1) (requiring a court to 3 assess an initial filing fee of 20 percent of a prisoner's average monthly deposits or monthly 4 || balance, whichever is greater). If Mr. Allen elects to have this lawsuit converted to a civil rights 5 action, he may file a new in forma pauperis application as to the higher filing fee. 6 It is Mr. Allen's responsibility to prosecute this case. He must keep the Court informed of 7 || any change of address by filing a separate paper with the Clerk headed "Notice of Change of 8 || Address," and must comply with the Court's orders in a timely fashion. Failure to do so will result 9 || in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 10 || 41(b). 1] IT IS SO ORDERED. 13 Dated: March 31, 2025 14 Z. 15 L Coy 2 P. Casey Pit = 16 United States District Judge Z 18 19 20 21 22 23 24 25 26 27 28