

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

TED RILEY FLOYD,

Petitioner,

v.

CASE NO.08-3229-SAC

SHELTON RICHARDSON,

Respondent.

O R D E R

This matter is before the court on a pro se pleading captioned as a "PETITION FOR A WRIT OF HABEAS CORPUS," submitted by a federal prisoner confined in a correctional facility in Leavenworth, Kansas, operated by the Corrections Corporation of America (CCA). Also before the court is petitioner's pro se motion for leave to proceed in forma pauperis under 28 U.S.C. § 1915. To the extent petitioner proceeds on a writ of habeas corpus, the court grants this motion.

Petitioner claims the denial of Kosher meals and congregational prayer at the CCA facility violates his rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act. He seeks a declaratory judgment on his claims, and a writ of mandamus to require CCA's compliance with federal law.

It is well established that habeas corpus is not available to seek relief on conditions of confinement claims. Rael v. Williams, 223 F.3d 1153, 1154 (10th Cir. 2000). Instead, because it appears petitioner alleges violations of federal law during his confinement in CCA pursuant to his federal conviction, the appropriate remedy to pursue in federal court is a complaint filed under Bivens v. Six

Unknown Named Agents, 403 U.S. 388 (1971), which established that a victim of a constitutional violation by a federal agent acting under color of federal law has a right to recover damages against that official in federal court.

Accordingly, the court concludes this habeas action should be dismissed without prejudice to petitioner resubmitting his claims on a court approved form for filing a Bivens complaint if he chooses to do so. See D.Kan. Rule 9.1(g)(court forms to be used by prisoners). If petitioner seeks leave to proceed in forma pauperis in such a Bivens action, he must submit an executed form motion for leave to proceed in forma pauperis under 28 U.S.C. § 1915, that is supported by a certified accounting of his inmate trust fund account for the six month period preceding the filing of his complaint.¹ Id. and 28 U.S.C. § 1915(a)(1) and (2).

¹Plaintiff is advised that the filing of a Bivens complaint will obligate plaintiff to pay the full \$350.00 district court filing fee. 28 U.S.C. § 1915(b)(1). If granted leave to proceed in forma pauperis, plaintiff may pay this district court filing fee over time by payment of an initial partial filing fee assessed by the court pursuant to 28 U.S.C. § 1915(b)(1), and by automatic payments thereafter from plaintiff's institutional account as authorized by 28 U.S.C. § 1915(b)(2).

Plaintiff is further advised the filing of such a civil action in federal court will be subject to the provisions of the Prisoner Litigation Reform Act of 1996 which include: judicial screening to determine if the complaint or any portion thereof should be summarily dismissed as frivolous, malicious, failing to state a claim for relief, or seeking monetary relief from a party immune from such relief, 28 U.S.C. § 1915A(a) and (b); and a "three strike" provision which prevents a prisoner from proceeding in forma pauperis in bringing a civil action or appeal in federal court if "on 3 or more prior occasions, while incarcerated or detained in any facility, [the prisoner] brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury," 28 U.S.C. § 1915(g).

IT IS THEREFORE ORDERED that petitioner's motion for leave to proceed in forma pauperis in this habeas action (Doc. 2) is granted, and that the petition for a writ of habeas corpus is dismissed without prejudice.

The clerk's office is to provide petitioner with court approved forms for filing a Bivens complaint and a motion under 28 U.S.C. § 1915.

IT IS SO ORDERED.

DATED: This 16th day of December 2008 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge