

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JAMES MATTHEW SIMMONS,

Plaintiff,

vs.

CIVIL ACTION
No. 10-3216-SAC

SAM CLINE, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter comes before the court on a petition for writ of mandamus filed by a prisoner in state custody. Petitioner proceeds pro se, and the court grants leave to proceed in forma pauperis.

Petitioner seeks to compel responses to grievances he submitted to state prison officials. Under 28 U.S.C. § 1361, the federal district courts "have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." However, "[n]o relief against state officials or state agencies is afforded by § 1361." *Amisub (PSL), Inc. v. Colo. Dep't of Soc. Servs.*, 879 F.2d 789, 790 (10th Cir. 1989). Accordingly, this action for mandamus

cannot proceed¹ and will be dismissed for failure to state a claim upon which relief may be granted. This dismissal counts as a "prior occasion" under the three strikes provision, 28 U.S.C. § 1915(g). See *Green v. Nottingham*, 90 F.3d 415, 418 (10th Cir. 1996).

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motions for leave to proceed in forma pauperis (Docs. 2 and 4) are granted.

IT IS FURTHER ORDERED the petition for mandamus is dismissed for failure to state a claim on which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

A copy of this order shall be transmitted to the petitioner.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 11th day of January, 2011.

S/ Sam A. Crow
SAM A. CROW
United States Senior District Judge

¹

The court offers no opinion on the availability of state court remedies.