

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JUSTIN PRUITT,

Plaintiff,

vs.

CIVIL ACTION
No. 11-3116-SAC

(FNU) FOWLER, District Court Judge,
and (FNU)(LNU), Lyon County District
Attorney,

Defendants.

MEMORANDUM AND ORDER

This matter comes before the court on a civil action filed by a prisoner in state custody. Plaintiff proceeds pro se and seeks leave to proceed in forma pauperis.

Because plaintiff is a prisoner, the court must screen his complaint and must dismiss any part of it that is frivolous, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(a)-(b).

Next, because plaintiff proceeds pro se and seeks leave to proceed in forma pauperis, his pleadings are given a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Despite this, plaintiff must present "enough facts to state a

claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

A careful reading of the complaint suggests that plaintiff seeks review of his conviction of aggravated burglary and relief from his guilty plea. Such a claim must be presented in habeas corpus. See *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)("[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.")

Accordingly, the court will direct the clerk of the court to transmit to the plaintiff a form pleading for the filing of a habeas corpus action. If plaintiff wishes to proceed in such an action, he must submit the completed form to the clerk of the court, and that form will be docketed in this action. If plaintiff does not wish to proceed in an action for habeas corpus, the court will dismiss this matter without prejudice.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is liberally construed as a petition for habeas corpus. The clerk of the court shall transmit to the plaintiff the form pleading for presenting a petition pursuant to 28 U.S.C. § 2254. Plaintiff is granted to and including August 19, 2011, to

complete and return the form to the clerk of the court for filing in this action. The failure to file a timely response will result in the dismissal of this matter without prejudice and without additional prior notice.

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

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 19th day of July, 2011.

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