

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JULIAN L. RUSSELL,

Plaintiff,

vs.

CIVIL ACTION
No. 11-3117-SAC

STATE OF KANSAS,

Defendant.

MEMORANDUM AND ORDER

This matter is a civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a prisoner in state custody. Plaintiff proceeds pro se, and the court grants leave to proceed in forma pauperis.

Plaintiff states he is incarcerated for a violation of parole, and he claims his sentence, which placed him on lifetime parole supervision, is illegal.

Because plaintiff proceeds pro se, the court liberally construes his pleadings. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). Because he challenges the legality of his custody and seeks relief from a part of his criminal sentence, his complaint is one that should be presented in a habeas corpus action filed pursuant to 28 U.S.C. § 2254. *See Preiser v.*

Rodriguez, 411 U.S. 475 (1973) (a state prisoner's challenge to the legality or length of confinement must be presented in a petition for habeas corpus after the exhaustion of state court remedies).

Accordingly, this matter will be liberally construed as a petition for habeas corpus and plaintiff will be directed to show cause why this matter should not be dismissed to allow him to pursue state court remedies.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is liberally construed as a petition for habeas corpus. Plaintiff is granted to and including July 28, 2011, to show cause why this matter should not be dismissed without prejudice. The failure to file a timely response may result in the dismissal of this action without prejudice and without additional prior notice.

IT IS FURTHER ORDERED plaintiff's motion for leave to proceed in forma pauperis (Doc. 2) is granted.

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

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 28th day of June, 2011.

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