

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

ANTHONY L. DAVIS,

Petitioner,

v.

CASE NO. 12-3141-SAC

DAVID MCKUNE,

Respondent.

O R D E R

This matter comes before the court on a form petition for filing under 28 U.S.C. § 2254, submitted by a prisoner incarcerated in a Kansas correctional facility. Petitioner proceeds pro se, and seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915.

Petitioner alleges prison overcrowding is subjecting him to cruel and unusual punishment, and contends his rights to due process and equal protection of the law were violated by his transfer to another facility.

Having reviewed petitioner's allegations, the court finds this action can be summarily dismissed because petitioner presents no factual or legal basis for obtaining habeas corpus relief. Instead, petitioner's allegations and prayers for relief clearly concern the conditions of his confinement, for which a civil rights action provides the appropriate remedy.<sup>1</sup> See *Muhammad v. Close*, 540 U.S. 749, 750

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<sup>1</sup>As the court has repeatedly noted, petitioner's litigation history in this court subjects him the "3 strike" provision in 28 U.S.C. § 1915(g), which bars petitioner from proceeding without prepayment of the \$350.00 district court filing fee absent a showing that he is subject to imminent danger of serious physical harm.

(2004)(challenges to validity of confinement or its duration are the province of habeas corpus; requests for relief turning on circumstances of confinement may be presented in a § 1983 action). Petitioner may not resort to habeas corpus to avoid or circumvent the filing restrictions imposed on non-habeas civil actions submitted to the federal court by a prisoner subject to the "3-strike" provision in 28 U.S.C. § 1915(g).

IT IS THEREFORE ORDERED that the petition for a writ of habeas corpus and all pending motions are denied.

**IT IS SO ORDERED.**

DATED: This 6th day of July 2012 at Topeka, Kansas.

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