

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JEFFREY SCHREIBER,

Petitioner,

ORDER

v.

02-C-351-C

DARRYL KUHL; LORI VINGE; DAVID
KNAAPEN; JAMES MILLER; JANE
KOHLWAY; RICHARD REHM; MARY
ANN KAUFMAN; MARK BENNETT;
MARC GUMZ; RICHARD DUFOUR; and
STEVE ROWE,

Respondents.

In an order dated August 26, 2002, I denied petitioner's motion to reconsider a previous order that denied petitioner's request for leave to proceed on a claim that respondents violated his right to due process, a speedy trial and effective assistance of counsel because I concluded that those claims should be presented in a petition for a writ of habeas corpus under 28 U.S.C. § 2254 rather than in an action under 42 U.S.C. § 1983. Petitioner has sent the court another letter, asserting that he is not seeking release but rather damages for violations of his constitutional rights. In addition, he has filed a document titled "Petition for Writ of Habeas Corpus," in which he requests both a writ and monetary damages.

To the extent that petitioner is again requesting the court to reconsider the order denying petitioner leave to proceed, that motion will be denied. As I have explained in previous orders, § 2254

(the habeas corpus statute) provides the sole remedy for challenging the validity of a conviction. Heck v. Humphrey, 512 U.S. 477 (1994). Further, if plaintiff seeks money damages for unlawful conviction rather than release, plaintiff may proceed under § 1983 only if his conviction “has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus.” Id. at 487. Plaintiff does not allege his convictions have been invalidated so he cannot proceed under § 1983 for monetary damages.

To the extent that petitioner is asking that the court convert his civil action into an action for a writ of habeas corpus, that motion will be denied as well. District courts are “not authorized to convert a § 1983 action into a § 2254 action.” Copus v. City of Edgerton, 96 F.3d 1038, 1039 (7th Cir. 1996). Rather, “[w]hen a plaintiff files a § 1983 action that cannot be resolved without inquiring into the validity of confinement, the court should dismiss the suit without prejudice.” Id. Petitioner may then exhaust his remedies in state court or, if he has already done so, he may file a *new* action *against his custodian*,

petitioning for a writ of habeas corpus under § 2254.

ORDER

IT IS ORDERED THAT

1. Petitioner Jeffrey Schreiber's motion to reconsider the August 26 order denying his previous motion to reconsider is DENIED.

2. Petitioner's motion asking this court to convert his civil action under 42 U.S.C. § 1983 into an action for a petition for a writ of habeas corpus is DENIED.

Entered this 13th day of September, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge