

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

MANUEL J. PACHECO :  
 :  
 v. : C.A. No. 11-419L  
 :  
 ASHBEL T. WALL :

**REPORT AND RECOMMENDATION**

Lincoln D. Almond, United State Magistrate Judge

On September 19, 2011, pro se Petitioner Manuel J. Pacheco filed a handwritten Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Document No. 1). Petitioner, a prisoner at the Rhode Island Adult Correctional Institutions, seeks relief from certain conditions of confinement that he contends are unconstitutional. The State of Rhode Island moved to dismiss the action, arguing that Petitioner’s claim was improperly filed as a habeas action and should be pursued, if at all, as a civil rights claim pursuant to 42 U.S.C. § 1983. (Document No. 3). Petitioner objected to the Motion to Dismiss, conceding that he was solely challenging the conditions of confinement, but contending that his claims were properly before the Court under the habeas statute. (Document No. 4). After thoroughly reviewing the parties submissions, I recommend that this case be dismissed for the following reasons.

**Discussion**

In December 2009, Petitioner pled nolo contendere to a criminal information charging weapons’ offenses and received a fourteen-year sentence, six to serve with eight years suspended. (Document No. 3 at 2). His four-count Petition alleges that his conditions of confinement are unconstitutional, specifically alleging that the Department of Corrections is tampering with his mail,

using state and local authorities to psychologically torture him, wrongfully seizing his legal paperwork and wrongfully seizing his personal materials. (Document No. 1 at 5-11). The State argues that because his claims do not relate to the “fact or duration or his confinement, but rather to the conditions of his confinement, [they] should be brought, if at all, pursuant to 42 U.S.C. § 1983, not 28 U.S.C. § 2254.” (Document No. 3 at 2). The State cites Preiser v. Rodriguez, 411 U.S. 475, 499 (1973) in support of its argument. Petitioner “fully admits that this Writ of Habeas Corpus has been filed based on the conditions of confinement,” however he contends the Writ of Habeas Corpus is the correct mechanism under which to pursue his claims. (Document No. 4-1 at 1-3).

The Supreme Court has held that “when 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.” Preiser, 411 U.S. at 500. On the other hand, when a prisoner is “making a constitutional challenge to the conditions of his prison life, but not the fact or length of his custody,” he must bring such a claim under either 42 U.S.C. § 1983 or the doctrine of Bivens v. Six Unknown Named Federal Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). Id. at 499.

It is undisputed that Petitioner’s claims challenge the conditions of his confinement and not his conviction or sentence. Petitioner has not argued that an adjudication of his claims would have any effect on the timing of his release from prison. Thus, the appropriate vehicle for his claim is a civil rights action rather than a habeas petition.

The substantive and procedural differences between habeas and § 1983 actions make it difficult for the Court to sua sponte convert a habeas claim to a § 1983 claim. See generally Glaus v. Anderson, 408 F.3d 382, 388-390 (7<sup>th</sup> Cir. 2005). Among other things, Warden Wall would not

likely be the correct or only defendant to a § 1983 action, the amount of the filing fee would be different (\$5.00 for habeas, \$350.00 for a civil rights action), and the relief available in a § 1983 action significantly differs from the relief available in a habeas action. For all of these reasons, judicial conversion of the present suit from a habeas corpus petition to a prisoner civil rights lawsuit is neither practical nor appropriate.

Accordingly, I recommend that the States' Motion to Dismiss (Document No. 3) be GRANTED and this action under 28 U.S.C. § 2254 be DISMISSED. Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1<sup>st</sup> Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1<sup>st</sup> Cir. 1980).

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
December 2, 2011