

APR 15 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHRISTOPHER ISAAC SIMMONS,

Petitioner - Appellant,

v.

ANTHONY HEDGPETH,

Respondent - Appellee.

No. 08-15143

D.C. No. 07-cv-01058-LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

California state prisoner Christopher Isaac Simmons appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we reverse and remand.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Simmons contends the district court erred by dismissing his habeas petition rather than construing it as a civil rights complaint pursuant to 42 U.S.C. § 1983. When a pro se habeas corpus petition may be fairly read to state a claim under the Civil Rights Act, it should be so construed. *See Galligher v. McCarthy*, 470 F.2d 740, 741 (9th Cir. 1972). Accordingly, Simmons' habeas petition is to be treated as a § 1983 complaint. *See id.* We remand for further proceedings consistent with this disposition. *See id.*

We express no opinion on the merits of Simmons' § 1983 action.

REVERSED; REMANDED.