

FILED

UNITED STATES COURT OF APPEALS

NOV 09 2010

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ANTHONY ANDRE SHARP,

No. 08-16648

Petitioner - Appellant,

D.C. No. 2:08-CV-00443-GEB

v.

Eastern District of California,
Sacramento

JOSEPH A. BICK,

ORDER

Respondent - Appellee.

Before: LEAVY, HAWKINS, and IKUTA, Circuit Judges.

Anthony Andre Sharp's petition for panel rehearing is granted. The memorandum disposition filed on September 1, 2010, is withdrawn. An amended memorandum disposition will be filed concurrently with this order.

No further petitions for rehearing will be entertained.

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MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Submitted August 10, 2010**

Before: LEAVY, HAWKINS, and IKUTA, Circuit Judges.

Anthony Andre Sharp appeals pro se the dismissal of his petition for removal of a California state court action to federal court. We have jurisdiction

* 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).

under 28 U.S.C. § 1291, and we affirm.¹

Sharp contends the district court erred by denying his petition for removal because the state court and state officials are violating his constitutional rights. We affirm the district court's conclusion that, as the plaintiff in the underlying state court action, Sharp cannot remove the case to federal court. *See* 28 U.S.C. § 1446(a); *see also American Int'l Underwriters, (Philippines), Inc. v. Continental Ins. Co.*, 843 F.2d 1253, 1260 (9th Cir. 1988) ("The right to remove a state court case to federal court is clearly limited to defendants.").

The district court, after it denied removal, was without jurisdiction to dismiss Sharp's action, and further erred in failing to remand to the state court. *See* 28 U.S.C. § 1447(c). We reverse the district court's order dismissing without prejudice, and we remand with instructions that the district court remand Sharp's action to the Sacramento County Superior Court.

All pending motions are denied.

Each party to bear its own costs on appeal.

AFFIRMED in part, REVERSED in part, and REMANDED with instructions.

¹ For the reasons stated in the district court's July 15, 2008, order, a certificate of appealability is unnecessary in this case.