

MAY - 3 2018

Clerk, U.S. District & Bankruptcy  
Courts for the District of ColumbiaUNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Montrell Gay-Bey,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 18-845 (UNA)
	)	
David Jay Bernstein,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

This matter is before the Court on its initial review of plaintiff's *pro se* complaint and application for leave to proceed *in forma pauperis*. The Court will grant the application and dismiss the complaint for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3) (requiring the court to dismiss an action "at any time" it determines that subject matter jurisdiction is wanting).

The subject matter jurisdiction of the federal district courts is limited and is set forth generally at 28 U.S.C. §§ 1331 and 1332. Under those statutes, federal jurisdiction is available when a "federal question" is presented or the parties are of diverse citizenship and the amount in controversy exceeds \$75,000. "For jurisdiction to exist under 28 U.S.C. § 1332, there must be complete diversity between the parties, which is to say that the plaintiff may not be a citizen of the same state as any defendant." *Bush v. Butler*, 521 F. Supp. 2d 63, 71 (D.D.C. 2007) (citing *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74 (1978)). A party seeking relief in the district court must at least plead facts that bring the suit within the court's jurisdiction. *See* Fed. R. Civ. P. 8(a).

Plaintiff is a federal prisoner incarcerated at the Hazelton United States Penitentiary in Bruceton Mills, West Virginia. He alleges that the defendant, a resident of Deerfield Beach, Florida, was paid \$5,000 to prepare a habeas petition under 28 U.S.C. § 2254. Plaintiff seeks a full refund.

The complaint does not present a federal question, and the amount in controversy is well below the threshold for exercising diversity jurisdiction. Plaintiff's recourse lies, if at all, in an appropriate state court. Consequently, this case will be dismissed without prejudice. A separate order accompanies this Memorandum Opinion.



---

United States District Judge

Date: <sup>May</sup>~~April~~ 3, 2018