

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

DAPHNE OCTAVIA SPURLOCK §
VS. § CIVIL ACTION NO. 1:17-CV-212
DIRECTOR, TDCJ-CID §

MEMORANDUM OPINION REGARDING TRANSFER

Petitioner, Daphne Octavia Spurlock, an inmate currently confined at the Mountain View Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The above-styled action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Discussion

Title 28 U.S.C. § 2254(a) allows a district court to “entertain an application for writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A state prisoner is required to file his federal petition for writ of habeas corpus in either the district where the prisoner is incarcerated or the district where the prisoner was convicted and sentenced. 28 U.S.C. § 2241(d). Although both district courts have jurisdiction to entertain the application, “[t]he district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.” *Id.*

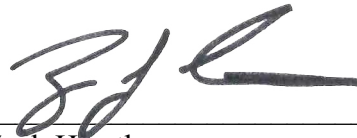
In the present case, petitioner contests a state court conviction in the 435th District Court in Montgomery County, Texas which is located in the Southern District of Texas, Houston Division. Petitioner is incarcerated at the Mountain View Unit located within the Western District of Texas,

Waco Division. Venue is not proper in the Eastern District of Texas, Beaumont Division as petitioner is neither incarcerated in this District nor was she convicted in this District. This application should be transferred to the Southern District of Texas, Houston Division for hearing and determination as petitioner was convicted in that District.

Conclusion

The Court has considered the circumstances underlying the particular facts of this case and has determined that venue is not proper in the Eastern District of Texas, Beaumont Division. This petition should be transferred to the Division where petitioner was convicted. Therefore, the petition should be transferred to the Houston Division of the Southern District of Texas for hearing and determination. An order transferring the case will be entered by the undersigned.

SIGNED this 18th day of May, 2017.

A handwritten signature in black ink, appearing to read 'Zack Hawthorn', written over a horizontal line.

Zack Hawthorn
United States Magistrate Judge