

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

TEXARKANA DIVISION

ERNEST MCFAIL

§

VS.

§

CIVIL ACTION NO. 5:11-CV-172

DIRECTOR, TDJC-CID

§

MEMORANDUM OPINION AND ORDER

Petitioner Ernest McFail, an inmate confined at the Ellis Unit of the Texas Department of Criminal Justice, Correctional Institutions Division in Huntsville, Texas, 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 a 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 either in 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.*

Petitioner is confined in the Southern District of Texas. He was convicted and sentenced in Hunt County, which is located in the Northern District of Texas. Therefore, this court lacks jurisdiction to consider the petition. The court has considered the circumstances and has determined that the interests of justice would best be served if this petition were transferred to the district where petitioner was convicted and sentenced. It is accordingly

ORDERED that this petition for writ of habeas corpus is **TRANSFERRED** to the Dallas Division of the United States District Court for the Northern District of Texas.

SIGNED this 12th day of September, 2011.


CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE