

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

LOTOYA SMITH,	)	
# 194593	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 2:09cv451-WHA
	)	(WO)
CYNTHIA S. WHEELER-WHITE, <i>et al.</i> ,	)	
	)	
Respondents.	)	

**RECOMMENDATION OF THE MAGISTRATE JUDGE**

This case is before the court on a *pro se* 28 U.S.C. § 2254 petition for habeas corpus relief filed by Lotoya Smith (“Smith”), an Alabama inmate incarcerated at ADOC Work Relief in Birmingham. Smith challenges her conviction and sentence for possession of burglar’s tools entered against her in July 2007 by the Circuit Court for Jefferson County, Alabama, a state trial court.

**DISCUSSION**

This court “in the exercise of its discretion and in furtherance of justice” may transfer an application for writ of habeas corpus to “the district court for the district within which the State court was held which convicted” the petitioner. 28 U.S.C. § 2241(d). Smith challenges a conviction and sentence entered against her by the Circuit Court for Jefferson County, Alabama. Jefferson County is located within the jurisdiction of the United States District Court for the Northern District of Alabama. In light of the foregoing, this court concludes

that transfer of this case to such other court for review and disposition is appropriate.<sup>1</sup>

## CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be TRANSFERRED to the United States District Court for the Northern District of Alabama pursuant to the provisions of 28 U.S.C. § 2241(d).

It is further

ORDERED that **on or before June 4, 2009**, the parties may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which a party objects. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5<sup>th</sup> Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d

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<sup>1</sup>Although her allegations in this regard are very unclear, Smith also appears to challenge actions of the Georgia state court that sentenced her for a conviction in that state, *see Doc. No. 1 at 5-7*, and to assert a cursory claim of prison overcrowding, *Doc. No. 1 at 10*. In transferring the present case, this court makes no determination with respect to the merits of any of Smith's claims and deems such matters as more appropriately addressed by the United States District Court for the Northern District of Alabama.

33 (11<sup>th</sup> Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done this 22<sup>nd</sup> day of May, 2009.

\_\_\_\_\_/s/Charles S. Coody  
CHARLES S. COODY  
UNITED STATES MAGISTRATE JUDGE