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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DWAIN SCALES,

No. C 09-03911 SBA (PR)

Petitioner,

ORDER OF TRANSFER

v.

BEN CURRY, Warden,

Respondent.

Petitioner, a state prisoner, has filed a pro se petition for a writ of habeas corpus. He has filed a motion for leave to proceed in forma pauperis.

Federal statute allows "the Supreme Court, any justice thereof, the district courts and any circuit judge" to grant writs of habeas corpus "within their respective jurisdictions." 28 U.S.C. § 2241(a). A federal petition for a writ of habeas corpus made by a person in custody under the judgment and sentence of a state court is properly filed in either the district of confinement or the district of conviction. Id. § 2241(d). Where a case is filed in the wrong venue, the district court has the discretion to transfer it to the proper federal court "in the interest of justice." See 28 U.S.C. § 1406(a).

Here, Petitioner challenges a conviction and sentence incurred in the Los Angeles County Superior Court, which is in the venue of the Western Division of the Central District of California. See 28 U.S.C. § 84. Accordingly, that is the proper venue for this action.

Pursuant to 28 U.S.C. § 1406(a) and Habeas L.R. 2254-3(b), and in the interest of justice, the Clerk of the Court is ordered to TRANSFER this action forthwith to the United States District Court for the Western Division of the Central District of California.

All remaining motions are TERMINATED on this Court's docket as no longer pending in this district.

IT IS SO ORDERED.

DATED: 9/21/09


SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DWAIN SCALES,
Plaintiff,

v.

BEN CURRY et al,
Defendant.

Case Number: CV09-03911 SBA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 23, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Dwain Scales F-50161
California Training Facility
P.O. Box 705
Soledad, CA 93960-0705

Dated: September 23, 2009

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk

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