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

STEVIE J SMITH,

1:09-cv-00711 MJS HC

Petitioner,

ORDER TRANSFERRING CASE TO THE
UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF
CALIFORNIA

vs.

AYERS,

Respondent.

_____ /

Petitioner, a state prisoner proceeding pro se, has filed a habeas corpus action pursuant to 28 U.S.C. § 2254.

The federal venue statute requires that a civil action, other than one based on diversity jurisdiction, be brought only in "(1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought." 28 U.S.C. § 1391(b).

Venue for a habeas action is proper in either the district of confinement or the district of conviction. 28 U.S.C. § 2241(d). The 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

1 district court for hearing and determination. Id.

2 It is preferable for petitions challenging a conviction or sentence to be heard in the district of
3 conviction while petitions challenging the manner in which the sentence is being executed be heard in
4 the district of confinement. Dunne v. Henman, 875 F.2d 244, 249 (9th Cir. 1989). In this case, the
5 petitioner is challenging a conviction from San Bernardino County, which is in the Central District of
6 California. See 28 U.S.C. § 84(b). Therefore, the petition should have been filed in the United States
7 District Court for the Central District of California. In the interest of justice, the petition will be
8 transferred to the United States District Court for the Central District of California. 28 U.S.C. §§ 1404(a)
9 and 2241(d).

10 Accordingly, IT IS HEREBY ORDERED that this matter is transferred to the United States
11 District Court for the Central District of California.

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13 IT IS SO ORDERED.

14 **Dated:** April 28, 2010

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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