

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

GAYLORD SMITH,

1:10-CV-01408 SMS HC

Petitioner,

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

vs.

JAMES D. HARTLEY,

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).

In this case, Petitioner claims the Board of Parole Hearings did not have subject matter jurisdiction to act on Petitioner's case because the indeterminate sentence he is serving is unauthorized. He claims the statute he was sentenced pursuant has been declared unconstitutional. He asserts he

1 should be resentenced to a determinate term by the sentencing court. Since Petitioner is challenging the  
2 underlying sentence, the petition should have been filed in the United States District Court for the  
3 Central District of California. In the interest of justice, a federal court may transfer a case filed in the  
4 wrong district to the correct district. See 28 U.S.C. § 1406(a); Starnes v. McGuire, 512 F.2d 918, 932  
5 (D.C. Cir. 1974).

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

8  
9 IT IS SO ORDERED.

10 **Dated: September 23, 2010**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28