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

RUSSELL LANG,

Petitioner,

No. CIV S-07-0632 MCE DAD P

vs.

K. MENDOZA-POWERS,

Respondents.

ORDER

\_\_\_\_\_/

Petitioner, a prisoner at Avenal State Prison, is proceeding pro se and has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.<sup>1</sup> Petitioner was convicted and sentenced in the Sacramento County Superior Court in 1974. However, in this action petitioner challenges the denial of parole by the Board of Prison Terms in 2005 while he was incarcerated at Avenal State Prison.

Through this habeas action petitioner seeks to challenge the execution of his sentence as opposed to his underlying criminal conviction. While venue is proper in a habeas action in either the district of confinement or the district of conviction under 28 U.S.C. § 2241(d), the district of confinement is the preferable forum where the action challenges the

<sup>1</sup> Petitioner also includes a request for the appointment of counsel in his memorandum of points and authorities. The court makes no ruling on that request.

1 execution of a sentence. Dunne v. Henman, 875 F.2d 244, 249 (9th Cir. 1989). Avenal State  
2 Prison is located in Kings County which is in the Fresno Division of the United States District  
3 Court for the Eastern District of California. See Local Rule 3-120(d).

4 Pursuant to Local Rule 3-120(f), a civil action which has not been commenced in  
5 the proper division of a court may, on the court's own motion, be transferred to the proper  
6 division of the court. Therefore, this action will be transferred to the Fresno Division of the  
7 court. This court will not rule on petitioner's request to proceed in forma pauperis.

8 Accordingly, in the furtherance of justice, IT IS HEREBY ORDERED that:

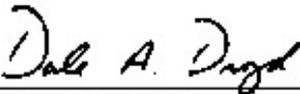
9 1. This court has not ruled on petitioner's request to proceed in forma pauperis  
10 and request for the appointment of counsel;

11 2. This action is transferred to the United States District Court for the Eastern  
12 District of California sitting in Fresno; and

13 3. All future filings shall reference the new Fresno case number assigned and  
14 shall be filed at:

15 United States District Court  
16 Eastern District of California  
17 2500 Tulare Street  
18 Fresno, CA 93721

18 DATED: April 19, 2007.

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21 \_\_\_\_\_  
22 DALE A. DROZD  
23 UNITED STATES MAGISTRATE JUDGE

23 DAD:4  
24 lang0632.109