

1 Petitioner seeks or why he filed his Petition in this Court.

2 From review of the documents Petitioner filed, it appears
3 that his original prison sentence imposed by the Riverside County
4 Superior Court on August 10, 1982 was for a term of 70 years in
5 state prison. See Doc. #1 at 20. On November 23, 1982, the
6 California Department of Corrections and Rehabilitation ("CDCR")
7 received an amended abstract of judgment that reduced Petitioner's
8 sentence from 70 years to 69 years. Id. Petitioner's release date
9 was then recalculated; he apparently is scheduled to be released on
10 December 30, 2019. Id. at 20-21.

11 On June 13, 2011, Petitioner filed a petition for a writ
12 of mandate in Sacramento County Superior Court in the California
13 Court of Appeal, Third Appellate District, ostensibly seeking to
14 compel CDCR to release to him all documents related to the
15 calculation of his prison sentence, including the amended abstract
16 of judgment. See Doc. #1 at 4 & 27. It appears that Petitioner is
17 asking this Court for the same - or similar - relief by filing the
18 instant Petition. See Doc. #1. But for the reasons that follow,
19 this Court is unable to entertain the Petition, which will be
20 DISMISSED.

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Federal district courts are without power to issue
mandamus to direct state courts, state judicial officers, or other
state officials in the performance of their duties. A petition for
a writ of mandamus to compel a state court or official to take or

1 refrain from some action is frivolous as a matter of law. See Demos
2 v. U.S. District Court, 925 F.2d 1160, 1161-62 (9th Cir. 1991).
3 Accordingly, this petition is frivolous as a matter of law and must
4 be DISMISSED.

5 Further, assuming Petitioner is challenging the manner in
6 which his sentence is being executed, he would not be able to do so
7 here. Venue in a habeas action is proper in either the district of
8 confinement or the district of conviction. See 28 U.S.C. § 2241(d).
9 Federal courts in California traditionally have chosen to hear
10 petitions challenging a conviction or sentence in the district of
11 conviction. See Dannenberg v. Ingle, 831 F. Supp. 767, 768 (N.D.
12 Cal. 1993); Laue v. Nelson, 279 F. Supp. 265, 266 (N.D. Cal. 1968).
13 However, if the petition is directed to the manner in which a
14 sentence is being executed, e.g., if it involves parole or time
15 credit claims, the district of confinement is the preferable forum.
16 See Habeas L.R. 2254-3(b)(2); Dunne v. Henman, 875 F.2d 244, 249
17 (9th Cir. 1989).

18 Here, Petitioner does not challenge his conviction.
19 Instead, he appears to be seeking documents he believes are
20 necessary to properly calculate the duration of his sentence. To
21 the extent such a claim challenges the manner in which his sentence
22 is being executed, it should be heard in his district of
23 confinement, namely the Northern District of Mississippi. However,
24 the Court declines to transfer this case to the Northern District of
25 Mississippi since it is frivolous as a matter of law. See Demos,
26 925 F.2d at 1161-62.

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II.

For the foregoing reasons, the petition is DISMISSED with prejudice for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915A. Based solely on his affidavit of poverty, Petitioner's requests to proceed in forma pauperis, Doc. ## 2 & 4, are GRANTED.

The Clerk is directed to terminate any pending motions as moot, enter judgment in accordance with this order and close the file.

IT IS SO ORDERED.

DATED 2/02/2012



THELTON E. HENDERSON
United States District Judge

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