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For the Northern District of California

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2	IN THE UNITED STATES DISTRICT COURT
3	FOR THE NORTHERN DISTRICT OF CALIFORNIA
4	DOCK MCNEELY, No. C 09-01203 CW (PR)
5	Petitioner, ORDER OF TRANSFER
6	V.
7	JOHN MCGINNESS,
8	Respondent.

This is a habeas case which was transferred here from the United States District Court for the Eastern District of Petitioner originally filed his pro se petition for a California. writ of habeas corpus in the Eastern District of California on January 22, 2009. His petition challenges the execution of his sentence. He also filed a motion for leave to proceed in forma pauperis (IFP).

On March 13, 2009, Magistrate Judge Dale A. Drozd of the United States District Court for the Eastern District of California issued an Order transferring Petitioner's action to this Court. This transfer was proper because Petitioner had been moved to Napa State Hospital, which is in the venue of the Northern District of California. <u>See</u> 28 U.S.C. § 84.

Petitioner's motion for leave to proceed IFP was granted by this Court on April 27, 2009.

On June 15, 2009, Petitioner filed a Notice of Change of Address informing the Court that he had been transferred back to the Sacramento County Main Jail.

A petition for a writ of habeas corpus filed by a state

prisoner in a State that contains two or more federal judicial
districts may be filed in either the district of confinement or the
district of conviction. <u>See</u> 28 U.S.C. § 2241(d). The district
court where the petition is filed or in the present case, where
the petition was transferred may transfer the petition to the
other district in the furtherance of justice. <u>See id.</u> Federal
courts in California traditionally have chosen to hear petitions
challenging a conviction or sentence in the district of conviction.
<u>See Dannenberg v. Ingle</u> , 831 F. Supp. 767, 767 (N.D. Cal. 1993);
<u>Laue v. Nelson</u> , 279 F. Supp. 265, 266 (N.D. Cal. 1968). But if a
habeas petition is directed to the manner in which a sentence is
being executed, e.g., if it involves parole or time credit claims,
the district of confinement is the preferable forum. <u>See</u> Habeas
L.R. 2254-3(a); <u>Dunne v. Henman</u> , 875 F.2d 244, 249 (9th Cir. 1989).

Petitioner is currently incarcerated at the Sacramento County Main Jail, which lies within the venue of the Eastern District of California. See 28 U.S.C. § 84. Because Petitioner challenges the execution of his sentence, the Court hereby ORDERS that pursuant to 28 U.S.C. § 1404(a) and Habeas L.R. 2254-3(b), and in the interests of justice, this petition be TRANSFERRED to the United States District Court for the Eastern 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: 8/24/09

CLAUDIA WILKEN

UNITED STATES DISTRICT JUDGE

1	UNITED STATES DISTRICT COURT
2	FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 4 5	DOCK MCNEELY, Case Number: CV09-01203 CW Plaintiff, CERTIFICATE OF SERVICE
6 7 8 9 10	V. JOHN MCGINNESS et al, Defendant. I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.
11 12 13 14	That on August 24, 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.
15 16 17 18 19 20 21 22 23 24	Dock McNeely X-2333938 Sacramento Main Jail 651 "I" Street Sacramento, CA 95814 Dated: August 24, 2009 Richard W. Wieking, Clerk By: Sheilah Cahill, Deputy Clerk
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