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

JOSEPH P. SHELTON

Petitioner,

No. 2:08-cv-3057 FCD KJN P

vs.

JOHN C. MARSHALL

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding without counsel, has filed an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On September 30, 2009, respondent filed a motion to change venue (Dkt. No. 15) to the Northern District of California, which petitioner opposes. This action was reassigned to the undersigned on February 9, 2010.

Petitioner is incarcerated in California Men’s Colony (CMC) in San Luis Obispo and was convicted in Mendocino County.¹ Both CMC and Mendocino County are in an area embraced by the United States District Court for the Northern District of California.

Pursuant to 28 U.S.C § 2241(d), courts in both the district of conviction and the district of confinement have concurrent jurisdiction over applications for habeas corpus filed by

¹ Petitioner indicated he was convicted in Lassen County Superior Court as the crime occurred in Lassen County. However, the trial was transferred to Mendocino County Superior Court.

1 state prisoners. Because petitioner was not convicted in this district, and is not presently
2 confined here, this court does not have jurisdiction to entertain the application.

3 Furthermore, petitioner previously filed a petition in this court, Shelton v.
4 Marshal, 2:07-cv-1246 GEB EFB.² While that petition could have been transferred to the
5 Northern District, this court dismissed the case as successive as the Ninth Circuit had not granted
6 petitioner leave to file a successive petition. Petitioner had previously filed a petition in the
7 Northern District of California that had been denied, Shelton v. Estelle, 3:91-cv-3948 FMS. On
8 November 4, 2008, petitioner obtained authorization from the Ninth Circuit Court to file a
9 successive petition. Petition, Exh. A; Shelton v. Marshall, Court of Appeals Docket #: 08-71163.
10 A review of the Ninth Circuit records indicates that the authorization to file a successive petition
11 relates to petitioner's prior habeas petition filed in the Northern District of California, Shelton v.
12 Estelle, 3:91-cv-3948 FMS. As the Ninth Circuit order relates to the Northern District case, this
13 action should be transferred.

14 For all these reasons the motion to change venue is granted.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Respondent's motion to change venue (Dkt. No. 15) is granted;
17 2. This matter is transferred to the United States District Court for the Northern
18 District of California. 28 U.S.C. § 2241(d); 28 U.S.C. § 1406(a).

19 DATED: March 5, 2010

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21 
22 KENDALL J. NEWMAN
23 UNITED STATES MAGISTRATE JUDGE

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26 ² A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803
F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).