

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 DOCK McNEELY,

Nos. C 12-1483 CW (PR)

C 12-2599 CW (PR)

4 Petitioner,

5 v.

ORDER DENYING RECONSIDERATION;

DISMISSING C 12-2599 CW (PR)

AS DUPLICATIVE; TERMINATING

ALL PENDING MOTIONS

6 KEVIN CHAPPELL, Warden,

7 Respondent.
8 _____/

9 On March 23, 2012, Petitioner, a state prisoner incarcerated
10 at San Quentin State Prison, filed McNeely v. Chappell, C 12-1483
11 CW (PR), a pro se petition for a writ of habeas corpus brought
12 pursuant to 28 U.S.C. § 2241, challenging the validity of his
13 confinement. On April 9, 2012, the Court reviewed the petition and
14 ordered the matter transferred to the United States District Court
15 for the Eastern District of California, finding as follows:

16 In 2000, Petitioner sought habeas corpus relief in
17 the United States District Court for the Eastern District
18 of California, challenging the constitutional validity of
19 his five-year pretrial detention on criminal charges
20 filed in Sacramento County Superior Court. The Eastern
21 District denied relief, but the Ninth Circuit Court of
22 Appeals found that Petitioner had been denied his
23 constitutional right to a speedy trial, reversed the
24 district court and ordered Petitioner's immediate release
25 from custody, with prejudice to re-prosecution of the
26 criminal charges. See McNeely v. Blanas, 336 F.3d 822,
27 832 (9th Cir. 2003).

28 In the instant petition, Petitioner appears to
allege that he was re-arrested by Sacramento police and
currently is imprisoned as a pretrial detainee on the
same criminal charges, in violation of the Ninth
Circuit's ruling.

A habeas petition by a state pretrial detainee
properly is brought under 28 U.S.C. § 2241. See Hoyle v.
Ada County, 501 F.3d 1053, 1058 (9th Cir. 2007). In a
state containing more than one federal district, the
petition may be filed in either the district of

1 confinement or the district of conviction. 28 U.S.C.
2 § 2241(d). Although each district has concurrent
3 jurisdiction to entertain the petition, the district
4 court for the district where the petition is filed "in
the exercise of its discretion and furtherance of justice
may transfer the application to the other district court
for hearing and determination." Id.

5 Here, Petitioner is confined within the venue of the
6 Northern District, but he is challenging the validity of
7 criminal charges filed against him in the Eastern
8 District. He maintains that those charges were filed in
9 violation of the Ninth Circuit's ruling granting relief
to Petitioner in his previous habeas action filed in the
Eastern District. Consequently, the Court finds that the
petition should be heard in the Eastern District.

10 Accordingly, pursuant to 28 U.S.C. § 1404(a), and in
the interest of justice, the Clerk of the Court is
11 ordered to TRANSFER this action forthwith to the United
States District Court for the Eastern District of
12 California.

13 Order at 1:14-2:20.

14 Petitioner has moved for reconsideration of the Court's order
15 transferring the petition, arguing the petition properly is brought
16 in the Northern District because he is not challenging the criminal
17 charges against him, but, rather, is challenging his physical
18 confinement.

19 The motion is DENIED. Petitioner states in the petition that
20 in 2008 he was arrested by the Sacramento County Sheriff's
21 Department based on erroneous information in the Department's
22 database that did not reflect accurately the disposition of his
23 prior criminal case. Although he does not explain the precise
24 grounds for his arrest and current incarceration, his request for
25 habeas relief is based on his contention that his confinement
26 violates the Ninth Circuit's ruling in his case in McNeely v.
27 Blanas, 336 F.3d 822 (9th Cir. 2003). As Petitioner has not
28 provided any information that indicates he is incarcerated because

1 of criminal charges brought, or a criminal conviction obtained, in
2 the Northern District, the Court will not reconsider its prior
3 ruling that the proper venue for this petition is the Eastern
4 District.

5 Petitioner recently filed another habeas petition, McNeely v.
6 Chappell, C 12-2599 CW (PR), which raises the same claims as the
7 petition in C 12-1483. Accordingly, that petition is hereby
8 DISMISSED as duplicative.

9 CONCLUSION

10 For the foregoing reasons, the Court orders as follows:

11 1. Petitioner's motion for reconsideration in McNeely v.
12 Chappell, C 12-1483 CW (PR) is DENIED.

13 2. The petition filed in McNeely v. Chappell, C 12-2599 CW
14 (PR) is DISMISSED as duplicative. The Clerk of the Court shall
15 enter judgment in that case and close the file.

16 3. The Clerk shall TERMINATE all pending motions in both
17 cases.

18 IT IS SO ORDERED.

19 Dated: 5/25/2012



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

20
21
22
23
24
25
26
27
28