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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH WAYNE ROBERTSON,

Plaintiff,

v.

WILLOWS POLICE DEPARTMENT, et al.,

Defendants.

Case No. [16-cv-06903-DMR](#) (PR)

ORDER OF TRANSFER

This case was opened when Plaintiff, a state prisoner proceeding *pro se*, filed a complaint under 42 U.S.C. § 1983 on the court’s civil rights form. Dkt. 1. He has also filed an application for *in forma pauperis* (“IFP”) status. Dkts. 2, 6.

This action has been assigned to the undersigned magistrate judge. On December 22, 2016, Plaintiff consented to magistrate judge jurisdiction in this matter. Dkt. 5.

It is not clear whether Plaintiff intends to file a civil rights action or a habeas action. In his complaint, under the “Statement of Claim” section, Plaintiff claims that the named Defendants in this action, including officers from the Willows Police Department in Glenn County and two judges from the Glenn County Superior Court, “took part in this malicious prosecution.” Dkt. 1 at 3. As relief, he requests monetary damages as well as for his sentence to be “vacated.” *Id.*

If this is a habeas case, it should preferably be heard in the district of confinement. Habeas L.R. 2254-3(a); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989). Petitioner seems to be challenging a conviction and sentence incurred in the Glenn County Superior Court, which is within the venue of the Eastern District of California. *See* 28 U.S.C. § 84. If this action is a civil rights case, the proper venue also would also be in the Eastern District, which includes Glenn

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County, where the putative Defendants would be found and where the claims arose. *See* 28 U.S.C. § 1391(b). The court need not decide whether this action should be treated as a habeas case or a civil rights case, because either way the preferable venue is in the Eastern District.

Accordingly, in the interest of justice and pursuant to 28 U.S.C. § 1406(a), this action is TRANSFERRED to the United States District Court for the Eastern District of California. The Clerk of the Court shall transfer the case forthwith.

All remaining motions are TERMINATED on this court’s docket as no longer pending in this district.

IT IS SO ORDERED.

Dated: February 15, 2017



DONNA M. RYU
United States Magistrate Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 KENNETH WAYNE ROBERTSON,
4 Plaintiff,

5 v.

6 WILLOWS POLICE DEPARTMENT, et al.,
7 Defendants.
8

Case No. [4:16-cv-06903-DMR](#)

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on February 15, 2017, I SERVED a true and correct copy(ies) of the attached, by
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.

16
17 Kenneth Wayne Robertson
18 #AY1348
19 Solano Level III 2-212-L
20 PO Box 4000
21 Vacaville, CA 95696

22 Dated: February 15, 2017

23 Susan Y. Soong
24 Clerk, United States District Court

25
26 By: 
27 Ivy Lerma Garcia, Deputy Clerk to the
28 Honorable DONNA M. RYU

United States District Court
Northern District of California