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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

N. WALLACE,

vs.

LARRY SMALL, Warden,

Petitioner,

Respondent.

CASE NO. 08cv1146-LAB (POR)

**ORDER ON MOTION TO
TRANSFER PETITION FOR
HABEAS CORPUS TO THE
CENTRAL DISTRICT OF
CALIFORNIA**

I. Background

Pending before the Court is Respondent’s motion to transfer Wallace’s habeas petition to the Central District of California under 28 U.S.C. § 2241(d). Wallace was convicted and sentenced in Los Angeles County, in the Central District, and is now serving his sentence in Calipatria State Prison, in the Southern District. Respondent’s position is that Wallace’s petition ought to be heard in the district in which he was sentenced.

Wallace disagrees. He argues that his petition in fact challenges the conditions of his imprisonment, and that it is best heard here in the Southern District. Wallace also argues that transferring his petition under § 2241(d) would be improper because the Central District lacks personal jurisdiction over Respondent.

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1 **II. Discussion**

2 Under 28 U.S.C. § 2241(d), a habeas petitioner in a state with two or more federal
3 districts may file a petition either in the district where the sentencing state court is located,
4 or in the district where he is held in custody. Section 2241(d) also provides that the two
5 federal district courts shall have concurrent jurisdiction to entertain a petition, and the district
6 court in which the petition is originally filed may, in its discretion, transfer the petition to the
7 other district court.

8 Wallace relies on *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989) for the
9 proposition that where a district court lacks jurisdiction over the prisoner’s custodian, it lacks
10 jurisdiction to hear a prisoner’s habeas petition. However, in *Dunne*, the petitioner was a
11 prisoner of the State of Washington, was incarcerated in a federal facility in Illinois, and filed
12 a habeas petition in Washington. The transfer provision of § 2241(d) was therefore
13 inapplicable. It is applicable here, though, because Wallace was sentenced in a California
14 state court and is now serving his sentence in a California facility. *Dunne*, 875 F.2d at 249
15 (“Section 2241(d) applies when the prisoner is confined in that state in which he was
16 convicted and sentenced.”).

17 The Ninth Circuit’s opinion in *Dunne* also noted that transferring a petition from one
18 district court to another under § 2241(d) is more appropriate when the petitioner was
19 convicted and sentenced in a state court in the transferee district and is challenging that
20 underlying conviction and sentence. *Dunne*, 875 F.2d at 249. Transfer is less appropriate
21 when he is challenging the conditions or circumstances of his ongoing confinement, in which
22 case it makes more sense for a district court in the federal district where he is confined to
23 hear the petition. *Id.* (“The proper forum to challenge the execution of a sentence is the
24 district where the prisoner is confined.”).

25 Wallace seizes on this point in opposing transfer, claiming that his habeas petition
26 challenges prison conditions rather than his underlying conviction and sentence.
27 Specifically, Wallace argues that “[t]he subject § 2254 is filed on the premises [sic] of prison
28 conditions, in that, a particular count that the sentencing court was silent on, the California

1 Department of Corrections at Calipatria decided and rendered a punishment for, thus
2 violating liberty interest and giving rise to a PC 1381 claim.” Respondent disagrees: “A
3 review of this Court’s Orders has clarified that Petitioner is not challenging a condition of his
4 confinement, and instead is directly challenging the judgment which has caused him to be
5 confined in the first instance.”

6 The Court disagrees with Respondent’s characterization of Wallace’s claims. The
7 basis of Wallace’s habeas petition is his allegation that “he has been in custody longer than
8 he should have been.” (Order Adopting R&R, 1.) As the recent R&R on Respondent’s
9 motion to dismiss put it, “Petitioner challenges the computation of his sentence and his
10 continued detainment in Calipatria State Prison.” (R&R, 3.) Wallace’s claims do not, as
11 Respondent argues, “exclusively challenge a judgment which was entered in Los Angeles
12 County”; they concern a sentence calculation by the California Department of Corrections
13 and Rehabilitation (“CDCR”) that was made after he was convicted and sentenced in Los
14 Angeles. Indeed, each of Wallace’s three stated grounds for habeas relief make clear that
15 Wallace’s grievance is with the CDCR’s execution of his state court sentence, not with that
16 sentence itself or the underlying state court conviction. Following the Ninth Circuit’s
17 instruction in *Dunne* that “[t]he proper forum to challenge the execution of a sentence is the
18 district where the prisoner is confined,” the Court sees little reason to transfer this case.

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1 **III. Conclusion**

2 It may be that Respondent seeks to have this case transferred because the
3 documentary record is incomplete, the Court has ordered Respondent to obtain it, and it will
4 be far easier for the Los Angeles office of the California Attorney General to do that. Be that
5 as it may, Respondent devotes a mere footnote in its brief to this explanation, and did not
6 file a reply brief to counter Wallace's claim that his habeas petition in fact challenges the
7 circumstances and execution of his sentence rather than the underlying state court
8 judgment. Respondent's motion is therefore **DENIED**, but without prejudice should
9 Respondent wish to file an amended motion to transfer in which it makes its position more
10 clear. Respondent must do so within 14 calendar days of the date this Order is entered.

11 **IT IS SO ORDERED.**

12 DATED: November 30, 2009

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15 **HONORABLE LARRY ALAN BURNS**
16 United States District Judge

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