

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

RUBEN DIAZ,

Petitioner,

vs.

CASE NO. 1:09CV212-MMP/AK

STATE OF FLORIDA,

Respondent.

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REPORT AND RECOMMENDATION

This matter is before the Court on Doc. 1, Petition for Writ of Habeas Corpus, filed by Ruben Diaz. At the time this proceeding was instituted, Petitioner was incarcerated at McRae Correctional Facility, McRae, Georgia, and he challenges his conviction out of the Circuit Court of Duval County, Florida. Although Petitioner has a conviction in this Court, he is not challenging that conviction but instead claims a double jeopardy violation arising from his conviction in state court. See *United States v. Diaz*, Cause No. 1:01cr16-MMP/AK (N.D. Fla.). Jurisdiction is therefore appropriate in either the district court which includes the Georgia facility or in the United States District Court for the Middle District of Florida, as the districts of confinement and conviction, respectively, 28 U.S.C. § 2241(d), but in no event is this cause properly filed in this District.

The district of conviction would appear to be the most convenient for witnesses should an evidentiary hearing be necessary, and therefore, transfer of this cause to the Middle District is appropriate. Mitchell v. Henderson, 432 F.2d 435, 436 (5th Cir. 1970) (division of conviction, where witnesses were located, was appropriate venue over division of confinement in challenge to conviction); Parker v. Singletary, 974 F.2d 1562, 1582, n. 118 (11th Cir. 1992) (courts should give careful consideration to convenience of witnesses in transferring habeas corpus petitions under § 2241(d)).

It is therefore respectfully **RECOMMENDED** that this case be **TRANSFERRED** to the United States District Court for the Middle District of Florida for all further proceedings.

IN CHAMBERS at Gainesville, Florida, this 19th day of October, 2009.

s/ A. KORNBLUM
ALLAN KORNBLUM
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

A party may file specific, written objections to the proposed findings and recommendations within 15 days after being served with a copy of this report and recommendation. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.