

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LARRY D. LANCASTER,

Petitioner,

v.

Case No. 8:09-cv-1612-T-33TBM

SECRETARY, DEPARTMENT OF
CORRECTIONS,

Respondent.

ORDER

This cause is before Petitioner's petition for writ of habeas corpus which was transferred to this Court by the United States District Court for the Northern District of Florida.

The transfer order reads, in part:

This cause is before the court upon petitioner filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (doc. 1). Petitioner is currently incarcerated at Okaloosa Correctional Institution in Crestview, Florida. He challenges his 1973 criminal conviction entered by the Circuit Court of Hillsborough County, Florida, as well as his 1980 conviction entered by the Circuit Court of Polk County, Florida. Pursuant to 28 U.S.C. § 2241(d), the court considers it to be in the interest of justice to transfer this case to the United States District Court for the Middle District of Florida, which is the district within which the state courts were held which convicted and sentenced petitioner.

Accordingly, it is therefore ORDERED:

The clerk shall transfer this case to the United States District Court for the Middle District of Florida.

Most respectfully, the transfer order appears to be incorrect. Petitioner is not challenging his 1973 and 1980 convictions in the petition that was transferred to this Court.¹ Instead, Petitioner is challenging the manner in which his sentence is being carried out. This Court notes that if Petitioner were challenging his 1973 conviction, the petition would be time-barred, and if he were challenging his 1980 conviction, the petition would be successive.

Because Petitioner is challenging the manner in which the sentence is being carried out, the proper jurisdiction is in the United States District Court for the Northern District of Florida. Therefore, pursuant to 28 U.S.C. § 2241(d), this case is transferred to the United States District Court for the Northern District of Florida for all further proceedings, and the Clerk shall immediately forward the file to that District.

ORDERED at Tampa, Florida, on August 31, 2009.


VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Marvin D. Lancaster

¹ Lancaster has already challenged his 1980 Polk County conviction in case number 8:97-cv-1426-T-23MAP. That petition was denied on April 28, 2000. The United States Court of Appeals for the Eleventh Circuit dismissed the appeal for want of prosecution.