

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JAMES WOLF,

Petitioner,

v.

Case Number 08-12667-BC
Honorable Thomas L. Ludington

RAYMOND BOOKER,

Respondent.

**ORDER GRANTING RESPONDENT'S MOTION TO TRANSFER CASE TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND
DIRECTING THE CLERK OF THE COURT TO TRANSFER THE CASE**

Petitioner James Wolf has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his 1995 conviction for first-degree criminal sexual conduct. Petitioner was sentenced to twenty-five to fifty years imprisonment for that conviction, and is currently incarcerated at the Carson City Correctional Facility in Carson City, Michigan. Previously, on March 8, 2002, Petitioner filed a habeas petition in federal court, challenging the same conviction and sentence. Now before the Court is Respondent's motion to transfer the case to the United States Court of Appeals for the Sixth Circuit, filed on December 29, 2008.

The Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2254, governs habeas corpus proceedings in federal courts. Under the AEDPA, an individual seeking to file a "second or successive" habeas petition must "move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998); *In re Wilson*, 142 F.3d 939, 940 (6th Cir. 1998). This requirement transfers to the court of appeals a screening function that the district court previously

performed. *Felker v. Turpin*, 518 U.S. 651, 664 (1996).

Here, Petitioner filed a prior habeas-corporus petition challenging the same conviction at issue in this case, which was denied as untimely. *Wolf v. Booker*, No. 02-70839 (E.D. Mich. dismissed Oct. 8, 2002). Petitioner subsequently filed three motions seeking authorization from the Sixth Circuit to file a second or successive habeas petition. Each motion challenged the same 1995 conviction and the Sixth Circuit denied all three motions. *In re Wolf*, No. 05-2665 (6th Cir. June 6, 2006); *In re Wolf*, 05-1449 (6th Cir. Sept. 23, 2005); *In re Wolf*, No. 06-2025 (6th Cir. Mar. 17, 2008). Because the petition before this Court is a “second or successive” petition and Petitioner has not obtained appellate authorization to file this subsequent petition as required by 28 U.S.C. § 2244(b)(3)(A), the Court will transfer the case to the Sixth Circuit Court of Appeals.

Accordingly, it is **ORDERED** that Respondent’s motion to transfer the case to the Sixth Circuit [Dkt. # 9] is **GRANTED**.

It is further **ORDERED** that the Clerk of the Court is **DIRECTED** to **TRANSFER** the case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631 and *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: January 14, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 14, 2009.

s/Tracy A. Jacobs
TRACY A. JACOBS