

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DARRYL MCGORE,

Petitioner,

v.

Case No.: 09-10697  
Honorable David M. Lawson

THOMAS BIRKETT,

Respondent.

**ORDER DENYING MOTION FOR LEAVE TO FILE NOTICE OF APPEAL**

The petitioner, Darryl McGore, has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging his convictions for one count of first-degree criminal sexual conduct and two counts of armed robbery. This Court transferred his petition to the Sixth Circuit as a second or successive petition. *See* 28 U.S.C. § 2244(b)(2); *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997). The petitioner has now filed a motion for leave to file a notice of appeal.

The Court has transferred the case to the Sixth Circuit Court of Appeals because it lacks jurisdiction over the petition. The Court also lacks jurisdiction to adjudicate the motion, which will be denied. Moreover, no notice of appeal needs to be filed, as the case is now pending before the Court of Appeals. In fact, the “transfer order [i]s non-appealable,” and the merits of the transfer will be decided by the Sixth Circuit in the transferred case. *Howard v. United States*, 533 F.3d 472, 474 (6th Cir. 2008). Therefore, the motion will be denied.

Accordingly, it is **ORDERED** that the petitioner’s motion for leave to file notice of appeal [dkt. #11] is **DENIED**.

s/David M. Lawson  
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DAVID M. LAWSON  
United States District Judge

Dated: April 16, 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 April 16, 2009.

s/Lisa M. Ware  
LISA M. WARE