IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION

JAMES M. GARDNER **PLAINTIFF**

v. **No. 3:23-cv-115-GHD-RP**

PANOLA COUNTY **DEFENDANT**

ORDER TRANSFERRING CASE TO THE
FIFTH CIRCUIT COURT OF APPEALS

This matter comes before the court, *sua sponte*, for consideration of the transfer of this cause. James M. Gardner has submitted an amended petition for a writ of *habeas corpus* under 28 U.S.C. § 2254. [3] Liberally construed, Gardner challenges his 2018 plea and sentences for malicious mischief and felony fleeing *and* the April 2022 revocation of his post-release supervision (PRS) on the malicious mischief charge and resulting eight-year sentence. The petitioner has filed at least one other unsuccessful 2254 motion concerning the same conviction and revocation he now seeks to challenge. *Gardner v. Panola County, Mississippi*, 3:23-cv-51-MPM-JMV. The Antiterrorism and Effective Death Penalty Act requires that before a district court files a second or successive petition, "the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." The petitioner has not obtained such an order. Rather than dismissing the petition on this basis, the Fifth Circuit permits district courts to transfer the petition for consideration pursuant to 28 U.S.C. § 2244(a) and (b)(3)(c). *See In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997). Therefore, in the interest of justice and judicial economy, it is **ORDERED:**

1) That this petition will be transferred to the Fifth Circuit Court of Appeals for the petitioner to seek leave to file this successive § 2254 petition;

2) That the Clerk of Court is directed to transfer this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. §2244(a) and (b)(3)(c), and *In re Epps*, 127 F.3d at 365; and

3) That this case is **CLOSED.**

SO ORDERED, this, the 27th day of January, 2025.

Glen H. Davidson

SENIOR JUDGE