

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DUANE GABRIEL,

Petitioner,

TRANSFER ORDER

-against-

21-CV-2207 (KAM)

MICHAEL CAPRA, Superintendent of Sing
Sing Correctional Facility,

Respondent.

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KIYO A. MATSUMOTO, United States District Judge:

On April 19, 2021, *pro se* petitioner Duane Gabriel ("Petitioner"), who is currently incarcerated at Sing Sing Correctional Facility in Ossining, New York, filed a petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254, and a request to proceed *in forma pauperis*. (See ECF Nos. 1, 2.) Petitioner is incarcerated following his conviction in 1996 for second-degree murder, fourth-degree grand larceny, and petit larceny in New York state court in Rensselaer County. See generally *People v. Gabriel*, 661 N.Y.S.2d 306 (N.Y. App. Div. 3d Dept. 1997).

"[A]pplications for a writ of *habeas corpus* made by persons under the judgment and sentence of a court of the State of New York shall be filed, heard and determined in the District Court for the district within which they were convicted and

sentenced[.]" Local Civil Rule 83.3. Petitioner was convicted and sentenced in Rensselaer County, which is located in the Northern District of New York. See 28 U.S.C. § 112(a) ("[t]he Northern District comprises the counties of," *inter alia*, "Rensselaer"). For the convenience of Petitioner and in the interest of justice, the instant petition shall be transferred to the United States District Court for the Northern District of New York. See 28 U.S.C. § 1404(a) ("for the convenience of parties" and "in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought"); Local Civil Rule 83.3 ("The Clerk[] of the . . . Eastern District Court[] [is] authorized and directed to transfer such applications to the District herein designated for filing, hearing and determination.").

The Clerk of Court is respectfully directed to mail a copy of this Order to Petitioner at his address of record, to note the mailing on the docket, and to transfer this action to the Northern District of New York. The Clerk of Court is further directed that he may transfer this action to the Northern District of New York without waiting seven days, as provided by Local Civil Rule 83.1, and that all pending motions

shall be terminated and the case shall be closed in this court.

Petitioner's request to proceed *in forma pauperis* is reserved for the transferee court.

SO ORDERED.

Dated: Brooklyn, New York
 April 28, 2021

_____/s/_____

Hon. Kiyo A. Matsumoto
United States District Judge