

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|-------------------------------|---|-----------------------------------|
| RAUL MARQUEZ, |) | |
| |) | |
| |) | |
| Petitioner |) | Civil Action No. 11-1116 |
| |) | |
| vs. |) | |
| |) | Judge Joy Flowers Conti/ |
| COMMONWEALTH OF PENNSYLVANIA, |) | Magistrate Judge Maureen P. Kelly |
| |) | |
| |) | |
| Respondent |) | |
| |) | |

MEMORANDUM ORDER

Raul Marquez, (“Petitioner”) filed what he entitled as a “Petition for Habeas Corpus in Abeyance” (the “Petition”). ECF No. 1. He originally filed the Petition in the United States District Court for the Middle District, which transferred the case to this District, ECF No. 5, because Petitioner was at the time of filing the Petition, incarcerated in the State Correctional Institution at Greene (“SCI-Greene”), which is located in Waynesburg, Pennsylvania, Greene County, which is within the territorial boundaries of the United States District Court for the Western District of Pennsylvania. 28 U.S.C. § 118(c).

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Report and Recommendation of Magistrate Judge Kelly recommended that the Petition be dismissed pre-service because it failed to state a claim cognizable in habeas, namely, complaining about the failure of the Court of Common Pleas of Berks County to appoint counsel for Petitioner who sought to file a petition for writ of certiorari in the United States Supreme Court from the Pennsylvania Supreme Court’s denial of his allocatur petition in the Petitioner’s Post Conviction Relief Act

("PCRA") proceedings. ECF No. 6. After being granted an extension of time, Petitioner filed a Response in the nature of Objections to the Report and Recommendation dated November 3, 2011 ("Objections"), ECF No. 9 and a Motion in the Nature of a Petition to Stay and Abey, ECF No. 10.

Petitioner's Objections are not entirely clear. However, he appears to raise new claims in the Objections which were not made in the Petition. See, e.g., ECF No. 9 at p. 2 ("now Petitioner does realize that he's [sic] cognizable claim to be cognizable under Habeas Corpus Writ . . . should be for example: How the Commonwealth [convicted Petitioner] using Non-enacted and non-Ratified Code, Status [sic] and Laws. . ."). Petitioner further included a heading entitled "Amendment Clause" and thereunder stated: "Petitioner hereby do [sic] attempt and request the acceptance of the Amend [sic] of Petition for Habeas Corpus. . ." Id. We conclude that Petitioner is now attempting to amend his Petition. Because, as the Report correctly noted, Petitioner's conviction arose out of the Court of Common Pleas of Berks County which is located within the territorial boundaries of the United States District Court for the Eastern District of Pennsylvania ("the Eastern District Court") and because there are potentially Anti-Terrorism and Effective Death Penalty Act ("AEDPA") statute of limitations concerns if the Court were to dismiss the Petition outright given Petitioner's apparent desire to amend, and in view of Petitioner's request that this case be stayed and abeyed, apparently due to concerns about the AEDPA statute of limitations, ECF No. 10 at 2 (last paragraph), the Court determines that the best course of action would be to transfer this case to the Eastern District, wherein Petitioner's conviction was obtained, in accordance with the practice of the United States District Courts located in Pennsylvania,¹ and allow the Eastern

¹ Ortiz v. Pennsylvania, No. 3:10cv028, 2010 WL 936448, at *1 (M.D.Pa., March 15, 2010) ("Magistrate Judge Malachy E. Mannion submitted his report and recommendation (Doc. 3) that this action be transferred from this district (where petitioner is in custody) to the United States District Court for the Eastern District of Pennsylvania (where petitioner was convicted) in keeping

District Court to address Petitioner's request for leave to amend his Petition as contained in Petitioner's objections.

Accordingly, after *de novo* review of the Report and the Objections thereto and all of the pleadings in the case, it is hereby **ORDERED** that the Report is adopted to the extent that it dismisses the Petition for failure to state a claim cognizable in habeas, albeit the dismissal is without prejudice to Petitioner seeking leave to amend his Petition in the United States District Court for the Eastern District of Pennsylvania to where we hereby **ORDER** the Clerk of this Court to transfer this case forthwith in order for that Court to address in the first instance Petitioner's request for leave to amend his Petition.

/s/ Joy Flowers Conti
Joy Flowers Conti
U.S. District Judge

Dated: January 23, 2012

cc: The Honorable Maureen Kelly

with agreed practice of the United States District Courts for the Middle, Eastern, and Western Districts of Pennsylvania.”); Nightingale v. Vincent, Civ.A. No. 08-95J, 2008 WL 1943427, at *2 (W.D.Pa., May 2, 2008) (“Moreover, the federal district courts in the three separate districts in the Commonwealth of Pennsylvania all follow the uniform practice of transferring habeas petitions filed by persons incarcerated within their districts to the district which encompasses the county in which the petitioner was convicted.”). See also Rouzer v. DiGuglielmo, Civ.A. No. 07-0268, 2007 WL 853750, at *1 (E.D.Pa., March 20, 2007) (“Here, Rouzer is incarcerated in this judicial district but he was convicted and was sentenced in Fulton County, which is located in the Middle District of Pennsylvania. See 28 U.S.C. § 118(b). The claims which Rouzer presents in his habeas petition deal with the constitutionality of his conviction and sentence and the performance of his attorney. Given that the records of his conviction and appeal are located in the Middle District of Pennsylvania, that the District Attorney of Fulton County would be in the best position to respond to Rouzer's petition, and that the primary witness presumed to have knowledge relevant to the claims of attorney ineffectiveness practices in Chambersburg, Pennsylvania, we believe it is in the interests of justice to transfer this petition to the Middle District.”) (footnote omitted).

United States Magistrate Judge

RAUL MARQUEZ
HN3283
SCI-Greene
175 Progress Drive
Waynesburg, PA 15370