

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TERRY LEE CLIFTON)	
)	
v.)	No. 3:14-1469
)	Judge Haynes/Bryant
DERRICK SCHOFIELD, ET AL.)	

To: The Honorable William J. Haynes, Jr., Senior Judge

REPORT AND RECOMMENDATION

By order entered February 6, 2015, this habeas case was referred to the undersigned for pretrial management. (Docket Entry No. 17) Currently pending are the pro se petitioner's motions (Docket Entry Nos. 19 and 22) for leave to amend his original petition, which petition was found to state at least one colorable claim for relief. (Docket Entry No. 4) Respondents the Tennessee Attorney General and Gerald McAllister, the warden of the prison where petitioner is incarcerated, have been served with copies of the original petition but have not been directed to file a response thereto. However, upon reviewing the petition, it appears to the undersigned that this petition was not properly filed in this district.

District court jurisdiction over petitions for federal habeas relief from state custody is provided by 28 U.S.C. § 2241. Rittenberry v. Morgan, 468 F.3d 331, 337 (6th Cir. 2006). Subsection (d) of that statute provides as follows:

Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the

district court for the district within which the State court was held which convicted him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

Petitioner, from the time he filed his petition until the present, has been in the custody of Warden McAllister at the Northeast Correctional Complex in Mountain City, Tennessee, which lies within Johnson County, located in the Eastern District of Tennessee. Petitioner was convicted and sentenced in Madison County, Tennessee, located within the Western District of Tennessee. While one of petitioner's claims involves the actions of the Board of Parole allegedly taken by officials here in the Middle District of Tennessee, the jurisdictional provision of § 2241 is limited to the districts of conviction and confinement. Accordingly, this case must be transferred to one or the other of those districts having concurrent jurisdiction.

In light of the fact that petitioner appears to be currently litigating a habeas petition involving identical procedural issues in the Western District, Clifton v. Easterling, Case No. 1:11-1347 (W.D. Tenn, Eastern Division) -- which petition was originally filed in this district and transferred by order of Judge Campbell,¹ and was the subject of the recent Sixth Circuit opinion in Clifton v. Carpenter, 775 F.3d 760 (6th Cir. 2014) -- the undersigned must conclude that the interests of justice and judicial economy would be served by the TRANSFER of this case to the United States District Court for the Western District of Tennessee, Eastern Division. 28 U.S.C. § 123(c)(1); 28 U.S.C. § 1406(a). It is so

¹Clifton v. Traughber, Case No. 3:11-1035, Docket Entry No. 6.

RECOMMENDED.

Any party has fourteen (14) days from receipt of this Report and Recommendation in which to file any written objections to it with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985); Cowherd v. Million, 380 F.3d 909, 912 (6th Cir. 2004)(en banc).

ENTERED this 7th day of July, 2015.

s/ John S. Bryant
JOHN S. BRYANT
UNITED STATES MAGISTRATE JUDGE