

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

TONY RAY FOUNTAIN §
VS. § CIVIL ACTION NO. 5:16-CV-193
DIRECTOR, TDCJ-CID §

MEMORANDUM OPINION REGARDING TRANSFER

Petitioner, Tony Ray Fountain, an inmate currently confined at the Connally Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The above-styled action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Discussion

Title 28 U.S.C. § 2254(a) allows a district court to “entertain an application for writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A state prisoner is required to file his federal petition for writ of habeas corpus in either the district where the prisoner is incarcerated or the district where the prisoner was convicted and sentenced. 28 U.S.C. § 2241(d). Although both district courts have jurisdiction to entertain the application, “[t]he 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.” *Id.*

In the present case, petitioner contests a state court conviction originating in Hopkins County, Texas which is located in the Eastern District of Texas, Sherman Division. Furthermore, petitioner is currently incarcerated at the Connally Unit located in the Western District of Texas, San Antonio

Division. This Court, therefore, has discretion to transfer the application to the Eastern District of Texas, Sherman Division for hearing and determination as petitioner was convicted and sentenced in that division.

Conclusion

The Court has considered the circumstances underlying the particular facts of this case and has determined that the interests of justice would be served by transferring this petition to the division where petitioner was convicted. Therefore, the petition should be transferred to the Sherman Division of the Eastern District of Texas for hearing and determination. An order transferring the case will be entered by the undersigned.

SIGNED this 11th day of April, 2017.


CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE