



## Phillips v. Rewerts

2020 | Cited 0 times | E.D. Michigan | July 9, 2020

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN

NORTHERN DIVISION

DARRELL PHILLIPS EL, #141807, P e t i t i o n e r , Case Number 20-11826 v. Honorable Thomas L. Ludington

RANDEE REWERTS, MICHIGAN DEP'T OF CORR., Respondents.

ORDER OF TRANSFER TO WESTERN DISTRICT OF MICHIGAN Darrell Phillips El (“Petitioner”), a state prisoner currently confined at the Carson City Correctional Facility in Carson City, Michigan, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, along with requests for an emergency injunction and placement in alternative incarceration due to his risk of illness or death due to COVID-19. Petitioner was convicted of armed robbery, carrying a concealed weapon, and possession of a firearm during the commission of a felony in the Saginaw County Circuit Court and was sentenced to 35 to 60 years imprisonment, a concurrent term of two to four years imprisonment, and a consecutive term of two years imprisonment in 2001. He previously filed a habeas petition challenging those convictions and sentences pursuant to 28 U.S.C. § 2254, but was denied relief. See Phillips v. Lafler, No. 2:04-CV-74519 (E.D. Mich. June 8, 2006), cert. app. den. No. 06-2241 (6th Cir. Dec. 10, 2007). Petitioner is not challenging his convictions or sentences in the instant petition, but rather is seeking alternative incarceration or release due to the ongoing pandemic. A state prisoner in a state that has two or more federal judicial districts may file a habeas petition in the district where the prisoner is in custody or in the district where the prisoner was convicted and sentenced. 28 U.S.C. § 2241(d). The district having custody of the prisoner and the district where the prisoner was convicted and sentenced have concurrent jurisdiction to entertain the application. Id. Moreover, the court in the district where the petition was filed may, in the exercise of its discretion and in furtherance of justice, transfer the application to the other district for a hearing and determination. Id.; see also 28 U.S.C. § 1404(a) (“For the convenience of parties and witnesses, 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.”). Petitioner was convicted in Saginaw County, which lies in the Eastern District of Michigan, but he is not attacking his conviction in this case. Instead, his petition and related requests are solely challenging the conditions of his confinement due to the spread of COVID-19 at his place of incarceration in Carson City, Montcalm County, Michigan, which lies in the Western District of Michigan. See 28 U.S.C. § 102(b). He also names as respondents the warden at



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his prison and the Michigan Department of Corrections (located in Lansing, Ingham County, Michigan), both of whom are located in the Western District of Michigan. *Id.* Because of the potential inconvenience and expense of moving Petitioner between his facility and the courthouse for any hearings and because the entirety of his petition relates to acts and witnesses within the confines of the Western District of Michigan, the Court finds that the Western District of Michigan is a more convenient and appropriate venue for this action and the interests of justice are served by a transfer of the case to that court. See *Starnes v. McGuire*, 512 F.2d 918, 931 (D.C. Cir. 1974); see also *Barrera v. Decker*, No. 20-CV-2755 (VEC), 2020 WL 1686641, \*1 (S.D.N.Y. April 7, 2020) (Southern District of New York lacked venue over habeas petitioner's claim that his health condition put him at imminent risk of contracting COVID-19, where the petitioner was incarcerated in New Jersey). Accordingly, it is ORDERED that the Clerk's Office is DIRECTED to TRANSFER this case to the United States District Court for the Western District of Michigan. The Court makes no determination as to the merits of the habeas petition, related requests, or any pending motions.

Dated: July 9, 2020 s/Thomas L. Ludington THOMAS L. LUDINGTON United States District Judge

### PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon Darrell Phillips #141807, CARSON CITY CORRECTIONAL FACILITY, 10274 BOYER ROAD, CARSON CITY, MI 48811 by first class U.S. mail on July 9, 2020. s/Kelly Winslow KELLY WINSLOW, Case Manager

