

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

VIRGIL M. SMITH,

Petitioner,

ORDER

v.

05-C-171-C

CATHY JESS, Warden, Dodge Correctional
Institution,

Respondent.

Virgil M. Smith, an inmate at the Dodge Correctional Institution, has filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. He has paid the five dollar filing fee. Petitioner seeks relief from a December 16, 2003 judgment of conviction entered by the Circuit Court for Milwaukee County.

Pursuant to 28 U.S.C. § 2241(d), a petitioner may file his petition either in the federal district court for the district where he is in custody or in the federal district court for the district within which the state court was held that convicted and sentenced him. Both the Dodge Correctional Institution and the Circuit Court for Milwaukee County are located in the Eastern District of Wisconsin. Therefore, under § 2241(d), this court is not the proper venue for the petition. Because I conclude that the interests of justice will be furthered by transferring the petition to the Eastern District, I will order the clerk to transfer the petition pursuant to § 2241(d).

Petitioner has filed with his petition a motion for change of venue. However, a motion for a change of venue cannot be used to create proper venue where it otherwise does not exist. Petitioner must present his motion to the Eastern District.

ORDER

IT IS ORDERED that the petition of Virgil Smith for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE for lack of venue. Pursuant to § 2241(d), the clerk of court shall transfer the petition to the United States District Court for the Eastern District of Wisconsin.

Entered this 31st day of March, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge