

APPENDIX
A

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 17-2988

ANTONIO SIERRA,
Appellant

v.

ATTORNEY GENERAL PENNSYLVANIA;
SUPERINTENDENT ALBION SCI;
DISTRICT ATTORNEY ERIE COUNTY

(M.D. Pa. No. 3-17-cv-01584)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE and
RESTREPO, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is DENIED.

BY THE COURT

s/ Kent A. Jordan
Circuit Judge

DATE: January 10, 2018
CJG/cc: Michael E. Burns, Esq.
Antonio Sierra

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 17-2988

ANTONIO SIERRA, Appellant

VS.

ATTORNEY GENERAL PENNSYLVANIA, ET AL.

(M.D. Pa. Civ. No. 3-17-cv-01584)

Present: JORDAN, SHWARTZ and KRAUSE, Circuit Judges

Submitted are:

- (1) By the clerk for possible dismissal due to a jurisdictional defect; and
- (2) Appellant's response
- * (3) Appellant's supplemental response

in the above-captioned case.

Respectfully,

Clerk

MMW/PJC/jw/cjg

ORDER

This Court's appellate jurisdiction is typically over "final decisions" by district courts. See 28 U.S.C. § 1291. The appeal has been taken from a pretrial order of a Magistrate Judge. See 28 U.S.C. § 636(b)(1)(A). Such an order must be appealed to the District Court Judge. See Siers v. Morrash, 700 F.2d 113, 114-15 (3d Cir. 1983).

Even if the order were entered by the District Court Judge, "[i]t is a well-established rule in this circuit (and generally) that orders transferring venue are not immediately appealable." In re Federal-Mogul Global, Inc., 300 F.3d 368, 378 (3d Cir. 2002) (internal quotation marks and citations omitted); see also Carteret Savings Bank, FA v. Shushan, 919 F.2d 225, 228 (3d Cir. 1990). Furthermore, to the extent that we may construe the notice of appeal as a mandamus petition, we conclude that mandamus relief is not warranted in this case. See In re U.S., 273 F.3d 380, 385 (3d Cir. 2001).

Accordingly, the appeal is dismissed for lack of appellate jurisdiction.

By the Court,

s/ Kent A. Jordan
Circuit Judge

Dated: November 2, 2017
CJG/cc: Antonio Sierra
Michael E. Burns, Esq.



A True Copy

Marcia M. Waldron

Marcia M. Waldron, Clerk

Certified order issued in lieu of mandate.

APPENDIX

B

APPENDIX

B

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

Sierra
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Appendix A
(pages)

ANTONIO SIERRA,	)	
Petitioner,	)	Civil Action No. 17-01 Erie
	)	
v.	)	
	)	Magistrate Judge Susan Paradise Baxter
WARDEN NANCY GIROUX, <u>et al.</u> ,	)	
Respondents.	)	

ORDER

State prisoner Antonio Sierra has filed a document in which he explains that he is seeking federal habeas relief. The federal habeas statute applicable to state prisoners is 28 U.S.C. § 2254. Sierra's filing does not comply with Rule 2 of the Rules Governing Section 2254 Cases In the United States District Courts and this Court's Local Rules governing actions under 28 U.S.C. § 2254 (LCvR 2254(B)). Accordingly, if he wants to proceed with this habeas litigation he must file the standard form entitled Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus By a Person In State Custody, which the Court is providing to him. Sierra must answer all of the questions on this form and file it as an amended petition for a writ of habeas corpus at this civil action number (1:17-cv-01).

As the instructions to the standard form make clear: "In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court...you must file a separate petition." See also Rule 2(e) of the Rules Governing Section 2254 Cases In the United States District Courts ("**Separate Petitions for Judgments of Separate Courts.** A petitioner who seeks relief from judgments of more than one state court must file a separate petition covering the judgment or judgments of each court.") If it is Sierra's intent to challenge a judgment of sentence imposed by the Court of Common Pleas of Erie County, he must file the standard form with this Court at this docket number. However, if it is his intent to challenge the judgment of sentence

B1

imposed by the Court of Common Pleas of Lebanon County, he should file the standard form in the United States District Court for the Middle District of Pennsylvania.

This case is and shall remain **ADMINISTRATIVELY CLOSED** until Sierra files an amended petition.¹

Based upon all of the foregoing, this 2nd day of February, 2017, **IT IS HEREBY ORDERED** that:

1. This case is **ADMINISTRATIVELY CLOSED**;
2. Attached to this Order is the standard form entitled Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus By a Person In State Custody. Sierra may reopen this case if he completes the standard form and files it at this civil action number as an amended petition for a writ of habeas corpus.

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States Magistrate Judge

¹ Administrative closings comprise a familiar way in which courts remove cases from their active files without final adjudication. Penn West Assocs., Inc. v. Cohen, 371 F.3d 118, 127 (3d Cir. 2004) (citation and internal quotations omitted). Administrative closure is a docket control device used by the Court for statistical purposes, and it does not prejudice the rights of the parties in any manner.

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

ANTONIO SIERRA,	)	
Petitioner,	)	Civil Action No. 17-01 Erie
	)	
v.	)	
	)	Magistrate Judge Susan Paradise Baxter
WARDEN NANCY GIROUX, <u>et al.</u> ,	)	
Respondents.	)	

ORDER

State prisoner Antonio Sierra has filed a document in which he explains that he is challenging the legality of his custody and in which he seeks an order from this Court that directs that he be released. The Court once again reminds Sierra that since he is incarcerated pursuant to a state court judgment of sentence and he seeks release from his alleged unlawful confinement, the only statute available to him to pursue his claims is 28 U.S.C. § 2254, which is the federal habeas statute applicable to state prisoners.¹ See Brian R. Means, FEDERAL HABEAS MANUAL § 1:34, WestlawNext (database updated May 2016) ("§ 2254 is the exclusive avenue for a state prisoner challenging the constitutionality of his detention."); Felker v. Turpin, 518 U.S. 651 (1996) ("Our authority to grant habeas relief to state prisoners is limited by § 2254, which specifies the conditions under which such relief may be granted to 'a person in custody pursuant to the judgment of a State court.'"); Coady v. Vaughn, 251 F.3d 480, 484-85 (3d Cir. 2001) (state prisoner "must rely on Section 2254 in challenging the execution of his sentence.")

¹ Sierra cannot avoid the rules applicable to "second or successive" § 2254 habeas petitions, 28 U.S.C. § 2244(b), or the one-year statute of limitations applicable to such petitions, id. § 2244(d), by calling his action a "motion at common law," when in actuality he is seeking federal habeas relief.

The federal habeas statute applicable to state prisoners is 28 U.S.C. § 2254. Sierra's filing does not comply with Rule 2 of the Rules Governing Section 2254 Cases In the United States District Courts and this Court's Local Rules governing actions under 28 U.S.C. § 2254 (LCvR 2254(B)). Accordingly, if he wants to proceed with this litigation he must file the standard form entitled Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus By a Person In State Custody, which the Court is once again providing to him. Sierra must answer all of the questions on this form and file it as an amended petition for a writ of habeas corpus at this civil action number (1:17-cv-01).

As the instructions to the standard form make clear: "In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court...you must file a separate petition." See also Rule 2(e) of the Rules Governing Section 2254 Cases In the United States District Courts ("**Separate Petitions for Judgments of Separate Courts.** A petitioner who seeks relief from judgments of more than one state court must file a separate petition covering the judgment or judgments of each court.") If it is Sierra's intent to challenge a judgment of sentence imposed by the Court of Common Pleas of Erie County, he must file the standard form with this Court at this docket number. However, if it is his intent to challenge the judgment of sentence imposed by the Court of Common Pleas of Lebanon County, he should file the standard form in the United States District Court for the Middle District of Pennsylvania.

AND NOW, this 10th day of **April, 2017**, it is **ORDERED** that this case shall remain **ADMINISTRATIVELY CLOSED**. Sierra may reopen it if he completes the standard form entitled Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus By a Person In State Custody and files it at this civil action number as an amended petition for a writ of habeas corpus.

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States Magistrate Judge

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8-7-17
Sgt Moran

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

ANTONIO SIERRA,	)	
Petitioner,	)	Civil Action No. 17-01 Erie
	)	
v.	)	
	)	Magistrate Judge Susan Paradise Baxter
WARDEN NANCY GIROUX, et al.,	)	
Respondents.	)	

OPINION AND ORDER

The Petitioner, Antonio Sierra, is incarcerated at the State Correctional Institution Albion ("SCI Albion"). He is serving a sentence imposed on October 28, 1998, by the Court of Common Pleas of Lebanon County,¹ following a jury's verdict (reached on September 11, 1998) that he was guilty of numerous crimes, including three counts of criminal attempt to commit homicide and eight counts of robbery. See ECF No. 8; criminal docket sheet for Commonwealth v. Sierra, No. CP-38-CR-1239-1997; Sierra v. DiGuglielmo, No. 3:06-cv-0604, 2006 WL 2038391 (M.D. Pa. July 18, 2006). He has filed with this Court an amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which he challenges the validity of convictions and sentence. (ECF No. 8). SCI Albion is located within the territorial boundaries of this District. Lebanon County is located within the territorial boundaries of the United States District Court for the Middle District of Pennsylvania. 28 U.S.C. § 118.

When a state prisoner files a petition for a writ of habeas corpus in a state like Pennsylvania, that 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 and sentenced him and each of such district courts shall have concurrent

¹ This Court takes judicial notice of the docket sheet for the Petitioner's criminal case, as well as information available via the records department at SCI Albion, which is also available to the public. Those documents and records establish that the Petitioner is serving a judgment of sentence imposed by the Court of Common Pleas of Lebanon County. He is not serving a judgment of sentence imposed by the Court of Common Pleas of Erie County, and there is no detainer lodged against him for the future service of an Erie County sentence.

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.**

28 U.S.C. § 2241(d) (emphasis added).

The Petitioner was tried, convicted, and sentenced in the Court of Common Pleas of Lebanon County and, therefore, most, if not all, of the relevant activity occurred within the Middle District of Pennsylvania. This Court finds that the furtherance of justice, as well as the convenience of the parties, would be better served by transferring this case to the Middle District Court. This decision is in accordance with the agreed practice of the United States District Courts for the Eastern, Middle, and Western Districts of Pennsylvania, which is to transfer habeas petitions filed by state prisoners in their respective districts to the district in which the county where the judgment of sentence was had is located.

An appropriate Order follows.

Dated: August 3, 2017

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States Magistrate Judge

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

ANTONIO SIERRA,	)	
Petitioner,	)	Civil Action No. 17-01 Erie
	)	
v.	)	
	)	Magistrate Judge Susan Paradise Baxter
WARDEN NANCY GIROUX, et al.,	)	
Respondents.	)	

ORDER

AND NOW, this 3rd day of August, 2017;

IT IS HEREBY ORDERED that the Clerk shall TRANSFER THIS CASE to the United States District Court for the Middle District of Pennsylvania. It is FURTHER ORDERED that the Clerk shall terminate Jack Daneri, Esq., who is the District Attorney of Erie County, as a respondent in this action because the judgment of sentence at issue was imposed by the Court of Common Pleas of Lebanon County. Therefore, District Attorney Daneri is not a proper respondent.

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States Magistrate Judge

Other Orders/Judgments1:17-cv-00001-SPB SIERRA v. KANE et al

U.S. District Court

Western District of Pennsylvania

Notice of Electronic Filing

The following transaction was entered on 8/3/2017 at 4:35 PM EDT and filed on 8/3/2017

Case Name: SIERRA v. KANE et al**Case Number:** 1:17-cv-00001-SPB**Filer:****WARNING: CASE CLOSED on 08/03/2017****Document Number:** 9**Docket Text:**

OPINION & ORDER that the Clerk shall TRANSFER THIS CASE to the United States District Court for the Middle District of Pennsylvania. It is FURTHER ORDERED that the Clerk shall terminate Jack Daneri, Esq., who is the District Attorney of Erie County, as a respondent in this action because the judgment of sentence at issue was imposed by the Court of Common Pleas of Lebanon County. Therefore, District Attorney Daneri is not a proper respondent. Signed by Magistrate Judge Susan Paradise Baxter on 8/3/17. (lrw)

1:17-cv-00001-SPB Notice has been electronically mailed to:**1:17-cv-00001-SPB Filer must deliver notice by other means to:**

ANTONIO SIERRA
DV0686
SCI ALBION
10745 STATE ROUTE 18
ALBION, PA 16475

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1098469114 [Date=8/3/2017] [FileNumber=5135111-0]
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10c80146881a0710efb0ae31da4febe86455e1b2484b1e751f90544aebc8]]

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APPENDIX C