

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
EASTERN DIVISION**

DUSTIN MCPHETRIDGE

PETITIONER

VS.

2:10CV00089 JLH/JTR

UNITED STATES OF AMERICA

RESPONDENT

**PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

**INSTRUCTIONS**

The following recommended disposition has been sent to United States District Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the United States District Judge, you must, at the same time that you file your written objections, include a "Statement of Necessity" that sets forth the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the requested hearing before the United States District Judge was not offered at the hearing before the

Magistrate Judge.

3. An offer of proof setting forth the details of any testimony or other evidence (including copies of any documents) desired to be introduced at the requested hearing before the United States District Judge.

From this submission, the United States District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Room 149  
Little Rock, AR 72201-3325

### **I. Background**

On June 10, 2010, Petitioner initiated this § 2241 habeas action in the Western District of Kentucky. *McPhetridge v. United States*; W.D. Ky. No. 3:10CV00438 JGH. On June 25, 2010 the case was transferred to the Eastern District of Arkansas because Petitioner was incarcerated at FCI Forrest City. (Docket entry #4).

On June 29, 2010, the Court entered an Order instructing Petitioner that, in order to proceed with this habeas action, he must: (1) pay the \$ 5.00 filing fee; or (2) file a Motion to Proceed *In Forma Pauperis*.<sup>1</sup>

On August 30, 2010, Petitioner filed a change of address indicating that the BOP had transferred him to the FCI in Fort Worth, Texas. (Docket entry #7). Petitioner also claimed that his

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<sup>1</sup>The docket sheet in the Western District of Kentucky reflects that Petitioner did not pay the filing fee or request to proceed *in forma pauperis*. The Court’s June 29 Order specified that Petitioner had until and including July 14, 2010 to pay the \$5.00 filing fee or file a Motion to Proceed in Forma Pauperis.

mail had not been forwarded to him in Texas from FCI Forrest City. As of this writing, Petitioner has neither paid the \$5.00 filing fee nor filed a Motion to Proceed *In Forma Pauperis*.

## **II. Discussion**

Under normal circumstances, the Court would recommend dismissal of this case, without prejudice, due to Petitioner's failure to comply with the Court's June 29, 2010 Order. However, due to Petitioner's intervening transfer to Fort Worth, the Court recommends that this case be transferred to the current district of his incarceration, the Northern District of Texas. *See Archuleta v. Hedrick*, 365 F.3d 644, 647-648 (8<sup>th</sup> Cir. 2004) (§ 2241 action attacking the execution of a sentence should be brought in the district of incarceration and against the warden with custody).

## **III. Conclusion**

IT IS THEREFORE RECOMMENDED THAT this action be TRANSFERRED to the Northern District of Texas.

Dated this 9<sup>th</sup> day of September, 2010.

  
UNITED STATES MAGISTRATE JUDGE