

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SEDLEY ALLEY,)
)
Plaintiff,)
)
v) No. 3:06-340
) Judge Trauger
)
GEORGE LITTLE, in his official capacity as)
Tennessee's Commissioner of)
Correction;)
)
RICKY BELL, in his official capacity as)
Warden, Riverbend Maximum)
Security Institution;)
)
JOHN DOE PHYSICIANS 1-100;)
)
JOHN DOE PHARMACISTS 1-100;)
)
JOHN DOE MEDICAL PERSONNEL 1-100;)
)
JOHN DOE EXECUTIONERS 1-100;)
)
JOHN DOES 1-100,)
)
Defendants.)

MOTION TO RECONSIDER ORDER TRANSFERRING CASE

This is a §1983 action, not a habeas corpus proceeding. It is clear that Plaintiff and the named Defendants are all residents of the Middle District of Tennessee and that the actions or occurrences challenged in the complaint would occur in the Middle District of Tennessee. 28 U.S.C. §1391(b) makes clear that this action can be brought “only in” this District, as all the Defendants are residents of this District (§(b)(1)), the claims arise out of activity in this District (§b(2)), and it is the district in which the Defendants are found. §b(3). There is no venue in the Western District of Tennessee.

To be sure, in a habeas proceeding, venue can lie in two different districts: The district of

conviction, and the district of incarceration. 28 U.S.C. §2241(d). For this reason, Sedley Alley's habeas petition was transferred to the Western District, which is the district of conviction.¹

Because this is a suit under 42 U.S.C. §1983, however, the venue provisions which apply are those of 28 U.S.C. §1391(b), not §2241(d). Venue, therefore, properly lies in the Middle District, not the Western District.

This Court should reconsider its order transferring the case, retain the case, and set the case for further proceedings.

Respectfully submitted,

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¹ In transferring this case, this Court noted that the Western District has before it a pending §1983 action. However, under §1391, the Western District is the proper venue for that §1983 because Sedley Alley is suing for release of evidence located in the Western District of Tennessee which is in the custody of Defendant(s) who reside in the Western District.

CERTIFICATE OF SERVICE

I certify that a copy of this motion was hand-delivered this day to the Office of the Attorney General, 425 Fifth Avenue North, Nashville, Tennessee 37243 this 12th day of April 2006.

/s/ Paul R. Bottei