UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JASON BRYANT,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. 3:17-cv-00860**
	)	**CHIEF JUDGE CRENSHAW**
TONY C. PARKER and KEVIN GENOVESE,	)	
	)	
	)	
Defendant.	)	

RESPONSE TO PETITION FOR MANDAMUS

On November 7, 2017, the United States Court of Appeals for the Sixth Circuit invited the Court to respond to the Petition for a Writ of Mandamus, asking the appellate court to direct the District Judge in the Eastern District of Tennessee to transfer this case back to this district. In re Bryant, No. 17-5816, ECF No. 9 (6th Cir. Nov. 7, 2017). The controversy arose after the Court granted Petitioner's Motion to Transfer (Doc. No. 8), sending his second or successive petition for a writ of habeas corpus to the court that considered the original habeas petition. (Doc. No. 12.) The Court offers the following response to the Sixth Circuit's invitation.

I. BACKGROUND

On February 20, 1998, Petitioner pleaded guilty to attempted first degree murder, first degree murder, especially aggravated kidnapping, aggravated kidnapping, and theft of property of $1,000.00-$10,000.00. (Doc. No. 1-2 at 8.) The state judge sentenced him to three consecutive sentences of life in prison without the possibility of parole. (Doc. No. 1-2 at 2.) After exhausting his state appeals (Doc. No. 1-2 at 9), Petitioner filed a Petition for a Writ of Habeas Corpus in the United States District Court for the Eastern District of Tennessee—the district of his conviction.

Bryant v. Carlton, No. 2:05-cv-151-JRG-MCLC, ECF No. 1 (May 25, 2005). After three years of litigation, the court denied the petition, id. at ECF No. 29, and the Sixth Circuit declined to issue a certificate of appealability, id. at 32.

On January 23, 2017, Petitioner filed a Motion to file a Second or Successive Petition in the Sixth Circuit, pursuant to 28 U.S.C. § 2244. In re Jason Bryant, No. 17-5066, ECF No. 1 (6th Cir.). The Sixth Circuit granted the Motion on May 17, 2017, and sent a letter to the Eastern District of Tennessee containing copies of the documents that had been filed. Id. at ECF Nos. 7-8 (May 17, 2017), which is pending in the Eastern District.

The next day, Petitioner filed the same second or successive petition, along with the Sixth Circuit's authorization, with this Court. (Doc. No. 1.) The Court ordered Respondent to respond to the petition, and Respondent did so by moving to transfer it to the Eastern District, the court that considered the original petition. (Doc. No. 8.) Petitioner, in an eight-page response, opposed the transfer. (Doc. No. 10.) In it, Petitioner raised four arguments, which the Court fully considered but only addressed in summary fashion in its transfer Order.[1] (Doc. No. 12.) The Court now utilizes the Sixth Circuit's invitation to further explain its decision.

II. ARGUMENTS RAISED BEFORE THE COURT

First, Petitioner argued that the transfer would be a burden on his pro bono attorneys. (Doc. No. 10 at 1-2.) The Court gave this little weight because the petition only raised a pure issue of law on whether his three consecutive mandatory life sentences without the possibility of parole violated Miller v. Alabama, 567 U.S. 460 (2012), and Montgomery v. Louisiana, 136 S.Ct 718

[1] Given the Court's current docket of over 800 cases, principles of judicial economy require the Court to prioritize which cases receive a full, written opinion, and which may be disposed of more summarily. Because the decision on whether to transfer the case was non-dispositive, the Court elected to summarily dispose of it after considering all the arguments in order to allow it to move forward, rather than place it at the back of the Court's priority list to receive a full, written opinion.

(2016).[2] (Doc. No. 1-1.) Thus, the Court believed that it is highly unlikely that counsel would be required to travel to the Eastern District for any evidentiary hearing or trial. Although the Court is sensitive to the pro bono counsel's convenience and would like to accommodate counsel as much as possible, the inconvenience of pro bono counsel's having to apply for pro hac vice status in the Eastern District was far outweighed by the judicial economy considerations given the Eastern District's prior consideration of the original Petition.

Given that the case involves a purely legal question, the convenience of the parties and witnesses also had little bearing on the Court's decision. (Doc. No. 10 at 3.) Although Petitioner averred that he would present evidence of employees and individuals at his prison who observed his personal growth since his incarceration, that would not be relevant to the federal habeas proceeding. Any re-sentencing, in which those factors would be relevant, would have to be completed by the state court—located in the Eastern District of Tennessee. See Hill v. Snyder, 821 F.3d 763, 769 (6th Cir. 2016) (discussing how a state may either resentence juveniles sentenced to life sentence without the possibility of parole or may allow such juveniles to be parole-eligible through legislation); Olivier v. Cain, No. 14-2773, 2016 WL 5678479, at *5 (E.D. La. Oct. 3, 2016) (vacating state sentence and ordering the state trial court to resentence the petitioner or release him from custody). As such, Petitioner's second argument carried little weight. See Parker v. Singletary, 974 F.2d 1562, 1582 (11th Cir. 1992) (finding that any abuse of discretion was "nullified by [the] court's determination . . . that no evidentiary hearing was required," and remanding the case to the "court that is already intimately familiar with [the petitioner's] claims").

Petitioner's third argument (state court bias) also had little weight in the Court's decision to transfer the case. (Doc. No. 10 at 4-5.) If Petitioner can prove that the state trial court is

[2] The Sixth Circuit has decided this question regarding one life sentence in Starks v. Easterling, 659 F. App'x 277, 280 (6th Cir. 2016), but the question regarding consecutive life sentences appears to be an open question.

prejudiced, the Eastern District judge has the same authority as the Court would have to order the state to re-try or re-sentence Petitioner in another county. As such, the ability of Petitioner to receive a fair jury trial in Greenville did not weigh heavily on the Court's decision to transfer the case.

Petitioner's fourth argument that Petitioner choose to file in the Middle District, also did not weigh heavily on the Court. (Doc. No. 10 at 5.) Petitioner recognizes both the Eastern District and the Middle District had concurrent jurisdiction over this matter. It is within the Court's discretion on whether to transfer it to the other district. 28 U.S.C. § 2241(d). Again, judicial economy considerations and the Eastern District's prior knowledge of the case outweighed that Petitioner chose to file his case here.

III. MOSES V. BUSINESS CARD EXPRESS FACTORS

In its Order inviting the Court to respond, it noted that Petitioner was asking the Eastern District to retransfer the case to the Court for consideration of the factors in Moses v. Business Card Express, Inc., 929 F.2d 1131 (6th Cir. 1991). That case instructs courts to consider "the private interests of the parties, including their convenience and the convenience of potential witnesses, as well as other public-interest concerns, such as systemic integrity and fairness, which come under the rubric of 'interests of justice.'" Id. at 1137 (quoting Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 30 (1988)). Should the Sixth Circuit direct the Eastern District to send the case back to the Court to reconsider its previous transfer Order, the Court would likely reaffirm its decision to transfer the case to the Eastern District under these factors, based on the current record before the Court.

As set forth above, the convenience of all parties, witnesses, and pro bono counsel are all negligibly affected by the transfer. While pro bono counsel will likely be required to be admitted

pro hac vice in the Eastern District, unless the requirement is waived, it is unlikely to "upset or destroy" any sort of pro bono relationship between counsel and Petitioner. (Doc. No. 10 at 2.) The concerns counsel has of commuting two hundred and fifty miles back and forth to Greeneville, Tennessee, are very unlikely to be realized in this case where the sole issue is purely a matter of law. (Doc. No. 10-1 at 3.) Further, any resentencing would have to be completed by the state court, rendering any potential prejudice moot at the federal level. (Doc. No. 10-1 at 4.) Ultimately, either forum would be equally convenient to all parties, and given the Eastern District's familiarity with the case, the interests of judicial economy would likely persuade the Court to transfer the case to the Eastern District.

However, the public interest concerns also compelled the Court to transfer the case. Given that Petitioner is from the Eastern District, was convicted in the Eastern District, and filed his original petition in the Eastern District, the Court believes it appears likely that Petitioner's pro bono counsel filed the case in the Court because he was forum shopping. "Judge shopping is 'a practice that abuses the integrity of the judicial system by impairing public confidence in the impartiality of judges.'" Keilholtz v. Superior Fireplace Co., No. C 08-00836 SI, 2008 WL 5411497, at *2 (N.D. Cal. Dec. 29, 2008) (citation omitted); see Vaqueria Tes Monjitas, Inc. v. Rivera Cubano, 230 F.R.D. 278, 279 (D.P.R. 2005) (collecting cases for the proposition that courts have "repeatedly recognized the troubling practice of judge-shopping"). "In the context of interdistrict litigation, judge shopping has been described as the situation existing where plaintiffs 'see a storm brewing in the first court [and] try to weigh anchor and set sail for the hopefully more favorable waters of another district.'" Murray v. Sevier, No. 92-1073-K, 1992 WL 75212, at *1 (D. Kan. Mar. 13, 1992) (quoting Telesco v. Telesco Fuel & Masons' Material, Inc., 765 F.2d 356, 360 n.4 (2d Cir. 1985)). Here, based on the record before the Court, it appears likely that Petitioner

saw "a storm brewing" in the Eastern District because the judge denied the previous petition and "set sail" for this Court to try his luck with a new judge. If true, the public interest would compel the decision to transfer the case to the Eastern District to preserve the integrity of the judicial system.

A final factor, one of systemic integrity, would also weigh in favor of transferring the case to the Eastern District. Denying the transfer of a successive petition to the court that heard the original petition is analogous to situations where the Court of Appeals orders reassignment when it remands a case. When a litigant requests reassignment, the Court of Appeals looks at three factors: "(1) whether the original judge would reasonably be expected to have substantial difficulty in putting out of his or her mind previously expressed views or findings; (2) whether reassignment is advisable to preserve the appearance of justice; and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of justice." Villegas v. Metro. Gov't of Nashville, 709 F.3d 563, 580 (6th Cir. 2013) (quoting Solomon v. United States, 467 F.3d 928, 935 (6th Cir. 2006)). These are essentially the arguments Petitioner attempts to make in this case. (Doc. No. 10.) The difference is that Petitioner argues that the state sentencing court is impacted by the second factor, but does not argue that the Eastern District judge is impacted by the first or second factor. Instead, failing to transfer the case would "entail waste and duplication out of proportion to any gain in preserving the appearance of justice." Id. There is simply no reason the Court should hear a successive petition rather than the judge who already decided the original petition.[3]

[3] In fact, given the Court's docket, Petitioner is likely to obtain a ruling from the Eastern District much faster than he would here, which would appear to benefit Petitioner given his conviction occurred over nineteen years ago and a favorable ruling from any court could entitle him to become parole-eligible.

IV. CONCLUSION

For the foregoing reasons, the Court accepts the Sixth Circuit's invitation to respond to the Petition for a Writ of Mandamus. The Clerk is **DIRECTED** to send this Response to the United States Court of Appeals for the Sixth Circuit.

Dated this 28th day of November, 2017.

WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE