

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Lawrence Christopher Smith v. Secretary

Smith v. Secretary · No. No. 1:23-cv-00526-KES-SAB (PC) · Decided April 15, 2025

OPINION

(PC) Smith v. Secretary

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 LAWRENCE CHRISTOPHER SMITH, No. 1:23-cv-00526-KES-SAB (PC)

12 Plaintiff, FINDINGS AND RECOMMENDATIONS

RECOMMENDING PLAINTIFF’S MOTION

13 v. FOR CHANGE OF VENUE AND MOTION

FOR SUMMARY JUDGMENT BE DENIED

14 SECRETARY, et al., (ECF No. 47) 15 Defendants. 16 17 Plaintiff is proceeding pro se and in
forma pauperis in this action filed pursuant to 42 18 U.S.C. § 1983. 19 Currently before the Court
is Plaintiff’s motion for change of venue and motion for 20 summary judgment, filed March 17,
2025. Plaintiff’s motions should be denied. 21 Plaintiff states that he seeks a transfer of this action
pursuant to 28 U.S.C. ¶ 1404. Under 22 ¶ 1404(a), an action may be transferred, “for the
convenience of parties and witnesses, in the 23 interest of justice, a district court may transfer any
civil action to any other district ... where it 24 might have been brought.” The ultimate
determination is subject to the discretion of the court and 25 must be made on a case-by-case
basis. Jones v. GNC Franchising, Inc., 211 F.3d 495, 498 (9th

26 Cir. 2000). Here, Plaintiff states that he seeks to transfer the action to the “district court for the
27 District of Columbia circuit where I will throw myself at the mercy upon the kitty’s.” (ECF No.
28 47 at 3.) Thus, Plaintiff has not provided an adequate basis to transfer this action and his
motion 1 should be denied. 2 Plaintiff also attaches a motion for summary judgment in support of
his claim that the 3 action should be transferred. Any motion for summary judgment is premature.
The Court has not 4 yet found that Plaintiff has stated a cognizable claim for relief, no Defendant
has been ordered 5 service, discovery as not yet commenced, and Defendants have not had an
opportunity to pursue 6 discovery. See, e.g., Baker v. German, No. 1:16-cv-01873-AWI-SAB
(PC), 2017 WL 531937, at 7 *1 (E.D. Cal. Feb. 9, 2017) (recommending summary judgment be
denied where complaint not 8 yet screened and service of complaint not yet authorized),

recommendation adopted 2017 WL 9 1427028 (E.D. Cal. Apr. 21, 2017); see also *Dews v. County of Kern*, No. 14-16423, 599 Fed. 10 App’x 681, 682 (9th Cir. Mar. 27, 2015) (finding district court properly denied Dews’s motions 11 for summary judgment as premature because a court must first screen a prisoner’s complaint); 12 *Williams v. Yuan Chen*, No. S-10-1292 CKD P, 2011 WL 4354533, at * 3 (E.D. Cal. Sept. 16, 13 2011) (denying plaintiff’s summary judgment motion as premature where defendant had not yet 14 filed an answer and the court had not issued a discovery order); *Moore v. Hubbard*, No. CIV S- 15 06-2187 FCD EFB P, 2009 WL 688897, at *1 (E.D. Cal. Mar. 13, 2009) (recommending that pre- 16 discovery motion for summary judgment be denied as premature); *Vining v. Runyon*, 99 F.3d 17 1056, 1058 (11th Cir. 1996) (“A premature decision on summary judgment impermissibly 18 deprives the [defendants] of their right to utilize the discovery process to discover the facts 19 necessary to justify their opposition to the motion”). Consequently, Plaintiff’s motion for 20 summary judgment is premature and must be denied. 21 Accordingly, it is HEREBY RECOMMENDED that: 22 1. Plaintiff’s motion for change of venue and motion for summary judgment be 23 DENIED. 24 These Findings and Recommendations will be submitted to the United States District 25 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen 26 (14) days after being served with these Findings and Recommendations, the parties may file 27 written objections with the Court, limited to 15 pages in length, including exhibits. The 28 document should be captioned “Objections to Magistrate Judge’s Findings and 1 | Recommendations.” The parties are advised that failure to file objections within the specified 2 | time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 3 | (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 4

5 IT IS SO ORDERED. FA. ee

6 | Dated: _ April 15,2025

STANLEY A. BOONE

7 United States Magistrate Judge 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28