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6/28/19

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

June 25, 2019

Therian Wimbush
1001955340
P.O. Box 839
Hawkinsville, GA 31036

RE: Therian Cornelia Wimbush v. Willie Sue Mickens, Warden
No: 18A1106

Dear Ms. Wimbush:

The above-entitled petition for writ of certiorari was postmarked June 19, 2019 and received June 24, 2019. The papers are returned for the following reason(s):

The petition is construed as seeking review under Rule 12.4 of both the judgment of the United States Court of Appeals for the Eleventh Circuit dated March 1, 2019 in case No. 18-14465, and the judgment of the same court on the same date in case No. 18-14467. On May 7, 2019, Justice Thomas granted application No. 18A1106, extending the time to file a petition for a writ of certiorari seeking review of the judgment in case No. 18-14465 from May 30, 2019 to July 29, 2019. However, the deadline for a petition for a writ of certiorari seeking review of the judgment in case No. 18-14467 remains May 30, 2019, thus the petition is untimely as to that case. Rules 13.1, 29.2 and 30.1. When the time to file a petition for a writ of certiorari in a civil case (habeas action included) has expired, the Court no longer has the power to review the petition. The petition must therefore be amended to as to not seek review of the judgment over which this Court no longer has jurisdiction. Rule 13.2.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk

By:


Jacob Levitan
(202) 479-3392

Enclosures

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | |
|--------------------------------------|-------------------------|
| THERIAN WIMBUSH, Petitioner, | :: HABEAS CORPUS |
| | :: 28 U.S.C. § 2254 |
| | :: |
| v. | :: |
| | :: |
| | :: |
| NATHAN DEAL; et al., Respondents. | :: CIVIL ACTION NO. |
| | :: 1:18-CV-2085-LMM-RGV |

ORDER

Therian Wimbush, an inmate at the Pulaski State Prison in Hawkinsville, Georgia, and her husband, Recardo Wimbush, who is currently incarcerated in Washington State Prison in Davisboro, Georgia, have jointly filed an amended 28 U.S.C. § 2254 petition challenging their convictions and sentences entered in the Superior Court of Gwinnett County. [Doc. 4]. However, two petitioners may not join in a single habeas corpus action.¹ Acord v. California, No. 1:17-CV-01089-MJS (HC), 2018 WL 347770, at *1 (E.D. Cal. Jan. 10, 2018).

Accordingly, the Clerk is **DIRECTED** to: (1) correct the docket sheet to show that Therian Wimbush is the sole petitioner in this § 2254 habeas action; and (2) open

¹ Other than the signatures, the handwriting on the amended petition is the same, which suggests that one petitioner is attempting to represent them both. See generally [Doc. 4]. However, a pro se prisoner may not bring an action on behalf of another inmate. Wallace v. Smith, 145 F. App'x 300, 302 (11th Cir. 2005) (per curiam).

a new civil action number with Ricardo Wimbush as the sole petitioner and file a copy of the amended § 2254 petition, [Doc. 4], and attached exhibits under that number.

IT IS SO ORDERED this 19th day of JUNE, 2018.



RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

28 USC
1283

| | | |
|---|----|----------------------|
| THERIAN WIMBUSH, Petitioner, | :: | HABEAS CORPUS |
| | :: | 28 U.S.C. § 2254 |
| | :: | |
| v. | :: | |
| | :: | |
| WILLIE SUE MICKENS, <i>Warden,</i> <i>Pulaski State Prison,</i> Respondent. | :: | CIVIL ACTION NO. |
| | :: | 1:18-CV-2085-LMM-RGV |
| | :: | |

ORDER

Therian Wimbush, an inmate at the Pulaski State Prison in Hawkinsville, Georgia, has filed this amended 28 U.S.C. § 2254 petition to challenge her February 1, 2017, convictions entered in the Superior Court of Gwinnett County. [Doc. 4]. Warden Willie Sue Mickens, petitioner's current custodian, is the sole proper party respondent to this action.¹ Accordingly, the Clerk is **DIRECTED** to **TERMINATE** Governor Nathan Deal, Commissioner Gregory C. Dozier, and Warden Nathan Brooks as respondents to this action.

¹ Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Court provides, “[i]f the petitioner is currently in custody under a state court judgment, the petition must name as respondent the state officer who has custody.” 28 U.S.C. foll. § 2254, Rule 2(a). Generally, the proper respondent is the warden of the institution where petitioner is incarcerated. *Id.*, Advisory Committee’s Note.

The Clerk **SHALL** transmit a copy of the petition and this Order by certified mail to respondent and the Attorney General of the State of Georgia. Respondent shall **SHOW CAUSE** within **THIRTY (30) DAYS** of the receipt of this Order why the § 2254 petition should not be granted, and **SHALL** transmit to this Court all available pleadings, transcripts, and decisions needed to determine the issues raised. As part of her response, respondent should address whether petitioner has exhausted her available remedies in state court, as required by 28 U.S.C. § 2254(b)(1).

Respondent is **ADVISED** that Appendix H to the Local Rules of this Court requires each exhibit less than 20 MB in size to be filed electronically as a separate attachment. Accordingly, respondent **SHALL** observe the following requirements. Each of the following documents, if available and part of the state court record, shall be filed as a separate exhibit and, depending on its size, as either a separate attachment or a separate series of attachments: (1) the state habeas petition, (2) the transcript of the state habeas evidentiary hearing, (3) the state habeas court's order, (4) the Georgia Supreme Court's order regarding the petitioner's application for a certificate of probable cause, (5) the indexed trial record (excluding the trial transcript) with the pages numbered consecutively at the bottom, and (6) the trial transcript. If the state

court record does not comply with these requirements, the Court, in its discretion, may strike the record and order respondent to file a version that does comply.

IT IS SO ORDERED this 20th day of JUNE, 2018.


Russell G. Vineyard

RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**