

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

REBEKAH A. ATKINS,)	
)	
Petitioner,)	
)	
v.)	No. 4:19-cv-00167-SEB-DML
)	
SHERRY BROWN,)	
JOSEPH L. CLAYPOOL,)	
BUREAU OF MOTOR VEHICLES,)	
)	
Respondents.)	

**ORDER DISMISSING PETITION FOR A WRIT OF HABEAS CORPUS
AND DENYING CERTIFICATE OF APPEALABILITY**

I.

The petitioner's motion for leave to proceed in forma paperis, dkt. [2], is **granted**. The petitioner's motion to appoint counsel, dkt. [3], is **denied without prejudice as premature**. See *Romanelli v. Suliene*, 615 F.3d 847, 852 (7th Cir. 2010).

II.

The petitioner's petition for writ of habeas corpus challenging her state court conviction in case number 31D01-1804-IF-000478 was filed on July 31, 2019. Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides that upon preliminary consideration by the district court judge, "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner."

"[I]n all habeas corpus proceedings under 28 U.S.C. § 2254, the successful petitioner must demonstrate that [s]he 'is in custody in violation of the Constitution or laws or treaties of the United States.'" *Brown v. Watters*, 599 F.3d 602, 611 (7th Cir. 2010) (quoting 28 U.S.C. § 2254(a)). In

other words, “a habeas corpus petition must attack the fact or duration of one’s sentence; if it does not, it does not state a proper basis for relief.” *Washington v. Smith*, 564 F.3d 1350, 1350 (7th Cir. 2009).

Here, the petitioner was convicted of a speeding infraction and was assessed a fine but was not sentenced to any term of incarceration or probation. Therefore, she is not in custody and cannot state a proper basis for federal habeas relief. She contends that her driver’s license was indefinitely suspended as a result of her conviction and that she has effectively been placed on house arrest without her driver’s license. While courts “recognize that, in our society, loss of driving privileges may entail hardship [], suspension of driving privileges is not the sort of ‘severe restraint[] on individual liberty’ for which habeas corpus relief is reserved.” *Harts v. State of Ind.*, 732 F.2d 95, 96–97 (7th Cir. 1984) (quoting *Hensley v. Municipal Court*, 411 U.S. 345, 353 (1973)).

It is clear from the petition and its attachments that the petitioner is not in custody and therefore does not state a proper basis for habeas relief. The petition is dismissed with prejudice pursuant to Rule 4. Judgment consistent with this Order shall now issue.

III. Certificate of Appealability

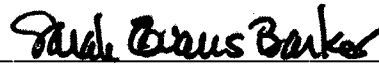
A petitioner “whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal.” *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). Instead, a petitioner must first obtain a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1). “A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In deciding whether a certificate of appealability should issue, “the only question is whether the applicant has shown that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Buck*, 137 S. Ct. at 773 (citation and quotation marks omitted).

Rule 11(a) of the Rules Governing Section 2254 Proceedings in the United States District Courts requires the district court to “issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” The petitioner is not in custody and therefore cannot state a proper claim for habeas relief. Jurists of reason would not disagree with this Court’s resolution of this claim and nothing about the claim deserves encouragement to proceed further.

The Court therefore **denies** a certificate of appealability.

IT IS SO ORDERED.

Date: 8/2/2019



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Distribution:

REBEKAH A. ATKINS
5017 E. Tunnel Road
Marengo, IN 47140

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted April 29, 2020

Decided May 11, 2020

Before

JOEL M. FLAUM, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

No. 19-2705

REBEKAH A. ATKINS,
Petitioner-Appellant,

Appeal from the United States District
Court for the Southern District of Indiana,
New Albany Division.

v.

No. 4:19-cv-00167-SEB-DML

SHERRY BROWN, *et. al.*,
Respondents-Appellees.

Sarah Evans Barker,
Judge.

ORDER

Rebekah Atkins has filed a notice of appeal from the denial of her petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. We have reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, Atkins's request for a certificate of appealability is **DENIED**.

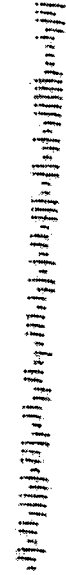
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UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



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NOTICE OF ISSUANCE OF MANDATE

June 2, 2020

To: Roger A. G. Sharpe
UNITED STATES DISTRICT COURT
Southern District of Indiana
210 Federal Building
New Albany, IN 47150-0000

No. 19-2705	REBEKAH A. ATKINS, Petitioner - Appellant v. SHERRY BROWN, et al., Respondents - Appellees
Originating Case Information:	
District Court No: 4:19-cv-00167-SEB-DML Southern District of Indiana, New Albany Division District Judge Sarah Evans Barker	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

RECORD ON APPEAL STATUS:

No record to be returned

NOTE TO COUNSEL:

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