

No. 24-

In the
Supreme Court of the United States

Lawrence Watson
Petitioner

v.

COMMISSIONER OF PROBATION EDWARD DOLAN AND
COMMISSIONER OF PROBATION DIANE FASANO
Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the First
Circuit

APPENDIX FOR THE PETITIONER

Lawrence Watson
Pro Se
P. O. Box 1331
Metairie LA 70001
May 6, 2024

United States Court of Appeals For the First Circuit

No. 23-1053

LAWRENCE BYRON WATSON,

Petitioner - Appellant,

v.

EDWARD J. DOLAN, Commissioner of Probation; ANDREA J. CAMPBELL, Attorney General,

Respondents - Appellees.

Before

Barron, Chief Judge,
Gelpí and Montecalvo, Circuit Judges.

JUDGMENT

Entered: December 12, 2023

Petitioner-Appellant Lawrence Byron Watson seeks a certificate of appealability in relation to the district court's denial and dismissal of his motion pursuant to 28 U.S.C. §2254. After careful consideration of the submissions before us, and after our own independent review of the record, we conclude that the district court's rejection of the petitioner's motion was neither debatable nor wrong, and that petitioner has therefore failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2); see Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, Watson's application for a certificate of appealability is denied.

Watson's motions to proceed in forma pauperis and for immediate decision are denied as moot.

The appeal is hereby terminated.

By the Court:

Maria R. Hamilton, Clerk

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

LAWRENCE BYRON WATSON

CIVIL ACTION

VERSUS

NO. 22-156

**COMMISSIONER OF
PROBATION EDWARD DOLAN**

SECTION: "H" (5)

REPORT AND RECOMMENDATION

Petitioner, Lawrence Byron Watson, filed the above-captioned petition for habeas corpus relief pursuant to Title 28 U.S.C. § 2254, challenging his February 16, 1995, conviction for domestic abuse and subsequent parole supervision in the Dorchester Division of the Boston Municipal Court in Dorchester, Massachusetts.¹ (Rec. docs. 1, 4-3). He acknowledges in a motion to transfer the petition to the United States Court of Appeals for the First Circuit (rec. docs. 7, 9), that this petition for federal habeas corpus relief was improperly filed in the Eastern District of Louisiana.²

Watson was convicted and sentenced in Dorchester, Massachusetts, and although no longer incarcerated there, may still be under restrictive orders issued by the Dorchester Division of the municipal court in the City of Boston, Suffolk County, Massachusetts, which is

¹ Watson contemporaneously filed two similar § 2254 habeas petitions in this Court: *Watson v. Dolan*, Civ. Action No. 22-153 "L"(4) and *Watson v. Dolan*, Civ. Action No. 22-151 "A"(3).

² In his motion, he requests transfer to the federal appeals court in Boston. He offers no legal basis for transferring the instant matter, filed in an incorrect federal district court, to an appeals court. As Judge Fallon determined in a similar case filed by Watson, in declining his request for transfer to the appeals court, the appropriate federal district court should first determine if the petition is second or successive pursuant to 28 U.S.C. § 2244(b). *Watson v. Dolan*, Civ. Action No. 22-153 "L" (4) (Rec. Doc. 12).

located within the boundaries of the United States District Court for the District of Massachusetts. 28 U.S.C. § 101. He plainly challenges convictions, sentences, and/or court orders issued in state court proceedings that were entered in the District of Massachusetts, not the Eastern District of Louisiana. The undersigned recommends that this matter, like his others, be transferred to the United States District Court for the District of Massachusetts. *See* 28 U.S.C. § 2241; 28 U.S.C. § 1406(a); 28 U.S.C. § 1631; *Watson v. Dolan*, Civ. Action No. 22-153 "L"(4) (adopting Report and Recommendation and ordering transfer of the Section 2254 petition to the United States District Court for the District of Massachusetts).

RECOMMENDATION

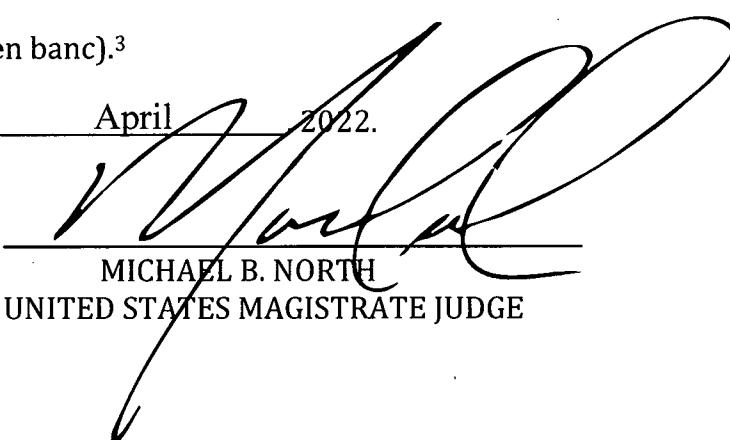
Accordingly, **IT IS RECOMMENDED** that the captioned matter be transferred to the United States District Court for the District of Massachusetts.

IT IS FURTHER RECOMMENDED that the Motion to Transfer (rec. doc. 9) and related Motion to File a Non-Conforming Motion (rec. doc. 10) be **DENIED**.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. *Douglass v. United Services Automobile*

Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).³

New Orleans, Louisiana, this 13th day of April 2022.


MICHAEL B. NORTH
UNITED STATES MAGISTRATE JUDGE

³ Douglass referenced the previously applicable ten-day period for the filing of objections. Effective December 1, 2009, 28 U.S.C. § 636(b)(1) was amended to extend that period to fourteen days.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LAWRENCE BYRON WATSON
VERSUS
COMMISSIONER OF PROBATION EDWARD DOLAN

CIVIL ACTION
NO. 22-156
SECTION: "H"(5)

ORDER

The Court, having considered the petition, the record, the applicable law, the Report and Recommendation of the United States Magistrate Judge, and the petitioner's failure to file an objection to the Magistrate Judge's Report and Recommendation, hereby approves the Report and Recommendation of the United States Magistrate Judge and adopts it as its opinion in this matter. Accordingly,

IT IS ORDERED that the pending motions are denied and the petition of Lawrence Byron Watson for issuance of a writ of habeas corpus under 28 U.S.C. § 2254, is **TRANSFERRED** to the United States District Court for the District of Massachusetts.

New Orleans, Louisiana, this 9th day of August, 2022.



JANE TRICHE MILAZZO
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LAWRENCE BYRON WATSON,)
Petitioner,)
v.)
EDWARD DOLAN and) Civil Action No. 22-11287-AK
ATTORNEY GENERAL STATE OF)
MASSSACHUSETTS,)
Respondents.)

)

ORDER OF DISMISSAL

A. KELLEY, D.J.

In accordance with the Court's Order dated December 30, 2022 (Dkt. No. 28), allowing Respondent's Motion to Dismiss, it is hereby ORDERED, that the above-entitled action be DISMISSED WITH PREJUDICE.

Dated: December 30, 2022

By the Court:

/s/ Miguel A. Lara
Deputy Clerk

United States Court of Appeals For the First Circuit

No. 23-1635

LAWRENCE BYRON WATSON,

Petitioner - Appellant,

v.

DIANE FASANO, Acting Commissioner of Probation,

Respondent - Appellee.

Before

Kayatta, Howard and Rikelman,
Circuit Judges.

JUDGMENT

Entered: December 20, 2023

Petitioner-Appellant Lawrence Byron Watson seeks a certificate of appealability in relation to the district court's dismissal of his motion pursuant to 28 U.S.C. § 2254. After careful consideration of the submissions before us, and after our own independent review of the record, we conclude that the district court's rejection of the petitioner's motion was neither debatable nor wrong, and that petitioner has therefore failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2); see Slack v. McDaniel, 529 U.S. 473, 484 (2000). Accordingly, Watson's application for a certificate of appealability is denied.

Watson's motion to proceed in forma pauperis is denied as moot.

The appeal is hereby terminated.

By the Court:

Maria R. Hamilton, Clerk

cc: Lawrence Byron Watson, Gabriel Thomas Thornton

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LAWRENCE WATSON

CIVIL ACTION

VERSUS

NO. 22-151

COMMISSIONER OF PROBATION
EDWARD DOLAN

SECTION: "A"(3)

ORDER

The Court, having considered the petition, the record, the applicable law and the Report and Recommendation of the United States Magistrate Judge, and the failure of any party to file any objection to the Magistrate Judge's Report and Recommendation, hereby approves the Report and Recommendation of the United States Magistrate Judge and adopts it as its own opinion.

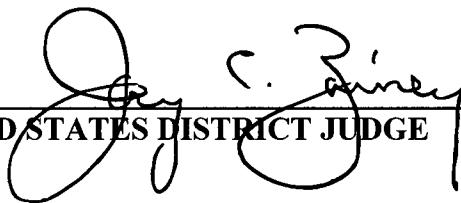
Accordingly;

IT IS ORDERED that petitioner's motion requesting that this matter be transferred to the United States Court of Appeals for the First Circuit, Rec. Doc. 9, is **DENIED**.

IT IS FURTHER ORDERED that this matter is **TRANSFERRED** to the United States District Court for the District of Massachusetts.

IT IS FURTHER ORDERED that petitioner's "Motion to File Non-Conforming Motion," Rec. Doc. 10, is **DENIED AS MOOT**.

May 16, 2022


C. B. RONEY, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LAWRENCE WATSON,

*

Petitioner,

*

v.

*

COMM. OF PROBATION EDWARD
DOLAN,

Civil Action No. 1:22-cv-10771

Respondent.

*

*

*

*

MEMORANDUM AND ORDER

BURROUGHS, D.J.

On January 21, 2022, Lawrence Watson (“Petitioner”) filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging a January 12, 2018 child support order. Currently before the Court is Edward Dolan’s (“Respondent”) motion to dismiss, [ECF No. 26], which, for the reasons set forth below, is GRANTED.

I. BACKGROUND

Petitioner and Sherry Walker (“Walker”) have a child together. [ECF No. 27-3 at 1]. After their 15-month relationship ended, [ECF No. 1-1 at 1], Petitioner filed a pleading in the Probate and Family Court for Suffolk County (“Probate Court”), seeking visitation and joint custody of their minor child. [ECF No. 30 at 1]. The Probate Court issued a final decision on the matter on July 1, 2004, [id. at 5], requiring Petitioner to pay “ongoing [child] support in the amount of \$108 per week” and arrears in the amount of \$928.38, [ECF No. 27-3 at 1]. Since then, Respondent has, on multiple occasions, sought to enforce the order for child support payment when Petitioner failed to pay. [ECF No. 27-3 at 1; ECF No. 30 at 10–13]. Meanwhile, Petitioner sought to reduce this obligation. [ECF No. 27-3 at 1].

On April 16, 2016, the Department of Revenue filed a complaint for contempt based on Petitioner's failure to pay child support. [ECF No. 27-3 at 1]. The Probate Court held a trial on January 12, 2018, and found that Petitioner owed "a principal arrears balance . . . of \$72,693.49," as well as \$65,115.52 in interest and penalties. [Id. at 2–4]. As a result, the Probate Court ordered Petitioner to pay "each week \$108 in child support and \$78 toward the arrears." [Id. at 4].

Petitioner filed a timely notice of appeal, [ECF No. 30 at 13], and requested immediate assembly of the record, [ECF No. 27-2 at 5]. The appellate court, however, never docketed the appeal, and there is no indication that Petitioner took any additional steps to pursue the appeal. [Id. at 5–6].

On January 21, 2022, Petitioner filed a petition for a writ of habeas corpus in the U.S. District Court in the Eastern District of Louisiana seeking relief from the 2018 final judgment on the contempt complaint concerning the alleged failure to pay child support. [ECF No. 30 at 13–14]. On April 18, 2022, the Eastern District of Louisiana transferred the matter to this Court. [Id. at 14]. Respondent filed a timely motion to dismiss the petition, arguing that (i) Petitioner failed to exhaust the claims in the petition under 28 U.S.C. § 2254(b)(1)(A), (ii) the petition is time-barred under 28 U.S.C. § 2244(d), and (iii) Petitioner is not "in custody" for federal habeas purposes. [ECF No. 27]. Petitioner opposed the motion on March 2, 2023. [ECF No. 30].

II. LEGAL STANDARD

"[The] standard of review upon a motion to dismiss a habeas claim is whether the facts alleged by the petitioner, taken as true unless contradicted by the record, state a claim upon which relief can be granted." United States v. Alba, 657 F. Supp. 2d 309, 312 (D. Mass. 2009) (citations omitted). A court must accept all of the non-moving party's well-pleaded facts as true

and consider them in the light most favorable to the non-moving party. Good v. Gray, No. 21-cv-11812, 2022 WL 2704467, at *2 (D. Mass. July 12, 2022).

A federal district court's review of a state criminal conviction is governed by the Antiterrorism and Effective Death Penalty Act of 1996 (the "AEDPA"). See 28 U.S.C. § 2254. As relevant here, under the AEDPA, a habeas petition "on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless," (1) "the applicant has exhausted the remedies available in the courts of the State"; or (2) there is either "an absence of available State corrective process" or "circumstances exist that render such process ineffective to protect the rights of the applicant." Id. § 2254(b)(1). The AEDPA also stipulates, in relevant part, that "[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court." Id. § 2244(d)(1).

III. ANALYSIS

Petitioner is not now, and was never, "in custody" as required by § 2254. This Court can only "entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court . . ." 28 U.S.C. § 2254(a). For habeas purposes, a person is in "custody" if he is physically imprisoned or on probation, Rosario v. United States, 389 F. Supp. 3d 122 (D. Mass. 2019); Brooks v. N.C. Dep't of Correction, 984 F. Supp. 940, 946 (E.D.N.C. 1997), but a person can also be in custody if he is under "restraints not shared by the public generally," Jones v. Cunningham, 371 U.S. 236, 240 (1963). The "custody" must be based on the same judgment challenged by the petition. Lackawanna Cnty. Dist. Att'y v. Coss, 532 U.S. 394, 401–06 (2001). "[A] determination of whether a petitioner is 'in custody' for purposes of habeas relief must be based on the restraints [P]etitioner suffers at the time he files

the petition” Watson v. Coakley, No. 11-cv-11697, 2011 WL 6046529, at *1 (D. Mass. Dec. 2, 2011) (citing Maleng v. Cook, 490 U.S. 488, 491 (1989)).

Here, Petitioner is not “in custody” within the meaning of § 2254. First, Petitioner was never on probation or incarcerated pursuant to the challenged judgment. The Probate Court only determined that Petitioner owed continuing and overdue child support payments. [ECF No. 27-3]. As Respondent accurately points out, “[P]etitioner was never charged with nor convicted of a crime as part of those Probate Court proceedings, nor was he ever placed on probation.” [ECF No. 27 at 2].¹

Second, obligating a Petitioner to make child support payments does not make him “in custody.” See Sevier v. Turner, 742 F.2d 262, 269 (6th Cir. 1984) (finding that a “civil judgment requiring [plaintiff] to pay child support does not . . . constitute ‘custody’” for purposes of habeas relief); Galbo v. Tirri, 972 F. Supp. 292, 293–94 (D.N.J. 1997) (holding that Petitioner’s obligation to “make the child support payments through the Probation Department does not impose a restraint on his liberty so pervasive as to fulfill the “custody” requirement of 28 U.S.C. § 2254(a)’); Anderson v. Worden, 744 F. Supp. 1042, 1044 (D. Kan. 1990) (“Petitioner’s continuing obligation to pay child support does not impose disabilities or burdens similar to

¹ Petitioner also asserts that he was on probation as the result of a different court order dated September 29, 2004. [ECF No. 30 at 31]. This is not relevant here, as the 2004 order is not the judgment challenged by the present petition. Further, another session of this district court previously found that Petitioner did not satisfy the “in custody” requirement for that 2004 judgment either. Coakley, 2011 WL 6046529, at *1. There, Petitioner had been ordered to report to the Probation Department to provide evidence of job searches. [ECF No. 30 at 5]. Petitioner, however, did not “state how often he must report to the Department of Probation and what authority the Department of Probation exercises over him on a continuous basis other than taking steps to ensure that he makes his court-ordered child support payments and monitoring his employment search.” Coakley, 2011 WL 6046529, at *1. The district court thus found that, “[a]lthough restraints short of incarceration may satisfy the ‘in custody’ requirement for habeas relief, the conditions imposed on [Petitioner did] not meet this threshold.” Id. (citing Jones, 371 U.S. at 242).

those resulting from a conviction, and does not require intervention by this court by way of habeas corpus relief.”).

Finally, though Petitioner argues he is “in custody” because he “cannot enjoy freedom of association,” [ECF No. 30 at 31], this is also not “custody” for habeas purposes, as not all restrictions on freedom resulting from court judgments suffice to establish “custody.” See Coakley, 2011 WL 6046529, at *1 (finding that not all “restraints that are not shared by the public generally” are sufficient to put one “in custody”). Similarly, the “threat of arrest and/or incarceration with merely an allegation of the violation of [an] order” does not put Petitioner “in custody.” [ECF No. 30 at 31]; see Tinder v. Paula, 725 F.2d 801, 803 (1st Cir. 1994) (“[H]abeas is not available as a remedy for fine-only convictions although the defendant remains subject to the supervision of the court and failure to pay the fine could result in incarceration.”).

IV. CONCLUSION

Accordingly, because Petitioner was not “in custody” when the petition was filed, the Court GRANTS the motion to dismiss.²

² Though the Court does not need to reach these issues here, it notes that Petitioner’s claims are likely time barred or unexhausted. As to the statute of limitations, § 2244(d) states, in relevant part, that a “1-year period of limitation shall apply to an application for a writ of habeas corpus.” This limitation period runs from the “date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A). Here, the Probate Court rendered a judgment on January 12, 2018, and Petitioner filed a notice of appeal on January 22, 2018, well within the thirty-day time limit for appeals from the Probate Court. [ECF Nos. 27-2 at 5, 27-3 at 2-3]; see Mass. R. App. P. 4. Petitioner then had fourteen days to file a transcript in the lower court clerk’s office, which he failed to do. Mass. R. App. P. 8, 9(d)(2). To the knowledge of this court, no request for an enlargement of time within which to file the transcript was ever made or granted here.

With regards to exhaustion, “[e]xhaustion obligations mandate that a habeas petitioner present, or do his best to present, his federal claim to the state’s highest tribunal.” Enwonwu v. Commonwealth, No. 18-cv-10517, 2018 WL 6198956, at *4 (D. Mass. Nov. 28, 2018) (quoting Adelson v. DiPaola, 131 F.3d 259, 263 (1st Cir. 1997)). Petitioner’s claims were not presented

“The district court must issue or deny a certificate of appealability when it enters a final order adverse to” a habeas petitioner. Rules Governing Section 2254 Cases, R. 11(a). Given that Petitioner is not “in custody,” the Court declines to issue a certificate of appealability here. See 28 U.S.C. § 2253(c)(2).

SO ORDERED.

July 19, 2023

/s/ Allison D. Burroughs
ALLISON D. BURROUGHS
U.S. DISTRICT JUDGE

to the Massachusetts Supreme Judicial Court—the highest state court in Massachusetts—or even heard by the intermediate appellate court and, as Petitioner concedes, he has not exhausted the remedies available in Massachusetts state courts. [ECF No. 1 at 5, 7, 10].

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

LAWRENCE WATSON

CIVIL ACTION

VERSUS

NO. 22-151

**COMMISSIONER OF PROBATION
EDWARD DOLAN**

SECTION: "A"(3)

REPORT AND RECOMMENDATION

Petitioner, Lawrence Watson, filed the instant federal application seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. In his application, he purports to challenge a judgment of conviction resulting from proceedings in a county court in Boston, Massachusetts. Although he is no longer incarcerated with respect to that judgment, he may still be under restrictive orders stemming from that proceeding.

Boston is located within the boundaries of the United States District Court for the District of Massachusetts, see 28 U.S.C. § 101, and so it is unclear why petitioner filed his application in this judicial district. However, now realizing his error and conceding that this Court lacks subject matter jurisdiction in this case, he has filed a motion asking that this matter be transferred to the United States Court of Appeals for the First Circuit, apparently believing that he will not be treated fairly in the federal district court in Boston.¹

The undersigned finds that this matter should indeed be transferred. See 28 U.S.C. §§ 1406(a) and 1631. However, as noted with respect to another similar application petitioner filed in this Court, the matter should be transferred to United States District Court for the District of

¹ Rec. Doc. 9.

Massachusetts, not the United States Court of Appeals for the First Circuit. See Watson v. Dolan, Civ. Action No. 22-153 (E.D. La. Apr. 11, 2022) (Fallon, J.).

RECOMMENDATION

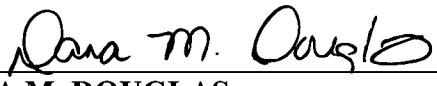
It is therefore **RECOMMENDED** that petitioner's motion requesting that this matter be transferred to the United States Court of Appeals for the First Circuit, Rec. Doc. 9, be **DENIED**.

It is **FURTHER RECOMMENDED** that this matter be **TRANSFERRED** to the United States District Court for the District of Massachusetts.

It is **FURTHER RECOMMENDED** that petitioner's "Motion to File Non-Conforming Motion," Rec. Doc. 10, be **DENIED AS MOOT**.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. 28 U.S.C. § 636(b)(1); Douglass v. United Services Auto. Ass'n, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

New Orleans, Louisiana, this 18th day of April, 2022.


DANA M. DOUGLAS
UNITED STATES MAGISTRATE JUDGE

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