

FILED *Am Caucl*
U.S. DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

JAN 06 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISIONJames N. Hatten, Clerk
Am Caucl
Deputy ClerkSHARON BRIDGEWATER, :: HABEAS CORPUS
Petitioner, :: 28 U.S.C. § 2254

v. :: ::

RANDY RICH, Superior Court :: CIVIL ACTION NO.
Judge of Gwinnett County, :: 1:11-CV-3828-ODE-AJB
Respondent. :: ::**ORDER**

Petitioner, pro se, seeks a writ of habeas corpus under 28 U.S.C. § 2254 regarding her convictions for traffic offenses in the Superior Court of Gwinnett County on September 19, 2007. (Doc. 1 at 1.) Petitioner states in her petition that she was sentenced to twelve months' probation for those offenses. (*Id.*; Doc. 1-1 at 3.)

Magistrate Judge Baverman reviewed the petition and found that the Court lacks jurisdiction over this case because Petitioner was not "in custody" pursuant to a state court judgment when she filed the petition on November 4, 2011. (Doc. 3 at 3-7.) Judge Baverman reached that conclusion because Petitioner's filings indicate that she received only a twelve-month probationary sentence on September 19, 2007 for the convictions that she challenges under § 2254 and that sentence expired over

three years before Petitioner filed this action. (*Id.*) Thus, Judge Baverman recommends that this action be dismissed for lack of jurisdiction. (*Id.* at 6.)

Petitioner has filed objections to Judge Baverman's Report and Recommendation ("R&R"). (Doc. 4.) In her objections, Petitioner contends that she "never completed the probation" and that her "probation has not expired" because the state court issued a "tolling order." (*Id.* at 2.) Petitioner therefore contends that she was "in custody" for purposes of § 2254 when she filed her petition in this case. (*Id.*)

Petitioner did not state in her petition or the other documents she filed with it on November 4, 2011 that she was still on probation or that her probation had been extended. Instead, Petitioner listed the date of her convictions as September 19, 2007 and the length of her sentence as "12 month." (Doc. 1 at 1.) Petitioner further stated that the state court sentenced her "to a term of 12 month probation with credit time served seven months (5 months probation), community service, substance abuse, suspended the [Petitioner] Georgia Drivers[] license." (Doc. 1-1 at 3.) Each time Petitioner mentioned her probation, she referred to it as a twelve-month probation sentence and did not state that the sentence was tolled or extended. Near the end of her petition, Petitioner stated that the state-court judge "put a 'tolling' order on [her] Nov. 30, 2007," but did not further describe that order, state that the order had

anything to do with her sentence of probation, or provide a copy of the order. (*Id.* at 17.) Only now, in her objections to the R&R, does Petitioner contend that the “tolling order” extended her probation by more than three years. (Doc. 4.)

Because the issue of whether Petitioner was still subject to the state court’s probation sentence when she filed her federal habeas petition is a jurisdictional one, the Court may receive evidence and make factual findings to determine whether it has jurisdiction. *See Bryant v. Rich*, 530 F.3d 1368, 1374, 1376 (11th Cir. 2008) (“Instances exist – such as those involving jurisdictional issues – when judges may resolve factual questions.”) (footnote omitted). “The burden for establishing federal subject matter jurisdiction rests with the party bringing the claim,” i.e., Petitioner. *See Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1247 (11th Cir. 2005). Petitioner’s federal habeas petition does not, on its face, support a finding that the Court has jurisdiction, and Petitioner has presented no evidence supporting her assertion that she was still serving her sentence of probation when she filed the petition. Nevertheless, the Court will give Petitioner an opportunity to present evidence on the issue.

The Court **ORDERS** Petitioner to submit, within **thirty (30) days** of the date this Order is entered, evidence supporting her assertion that she was serving her

sentence of probation when she filed her federal habeas petition on November 4, 2011, including any order by the state court tolling or extending Petitioner's probation. Petitioner's failure to submit such evidence may result in dismissal of this action for lack of jurisdiction.

The Court **DIRECTS** the Clerk to refer this case back to Judge Baverman if Petitioner submits evidence as directed in this Order. Judge Baverman shall review any evidentiary submission and make any factual findings needed to determine if the Court has jurisdiction over this case. If Judge Baverman finds that the Court has jurisdiction, he shall withdraw the R&R entered on November 22, 2011 and conduct further proceedings in this case.

SO ORDERED this 06 day of January, 2012.



ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE