

IN THE CIRCUIT COURT OF RANDOLPH COUNTY, MISSOURI

DENNY R. HARDIN,)
)
 Petitioner,)
)
 v.) No. 10RA-CV00208
)
 DEAN MINOR,)
)
 Respondent.)

**RESPONSE TO ORDER TO SHOW CAUSE WHY
A WRIT OF HABEAS CORPUS SHOULD NOT BE GRANTED**

Comes now respondent, by and through counsel, and states as follows in response to this Court's order to show cause why a writ of habeas corpus should not be granted.

Statement of Custody and Parties

Named petitioner, Denny R. Hardin, is currently incarcerated at the Moberly Correctional Center located in Moberly, Missouri, pursuant to the sentence and judgment of the Circuit Court of Jackson County, Missouri. Petitioner was found guilty of tampering with judicial process for which he was sentenced to five years imprisonment with the Missouri Department of Corrections. Petitioner has yet to complete service of this sentence. Named respondent, Dean Minor, Warden of the Moberly Correctional Center, is petitioner's custodian and is the proper party respondent. Missouri Supreme Court Rules 91.01, .04, .07.¹

¹ The court's docket sheet also indicates that Melinda Sue Harrington is a petitioner. But that person does not allege that she is in custody or that she is in custody in Randolph County. Accordingly, the court's March 30, 2010 order to show cause is properly limited to Mr. Hardin.

Statement of Exhibits

1. Respondent's Exhibit A is a copy of the August 18, 2006 sentence and judgment in State v. Denny Hardin, No. 0616-CR01640-01.

2. Respondent's Exhibit B is a copy of the August 12, 2009 judgment revoking probation in State v. Hardin, No. 0616-CR01640-01.

3. Respondent's Exhibit C is a copy of the docket sheet from the CaseNet Service in Denny R. Hardin v. State, No. 0916-CV-33861 (Jackson County).

Statement of Default & Merits

On August 18, 2006, petitioner was convicted in the Jackson County Circuit Court of tampering with a judicial proceeding for which he was placed on probation (Respondent's Exhibit A). One of the conditions of probation was that petitioner was not file on behalf of anybody or to appear in court on behalf of anybody (Respondent's Exhibit A, page 2). Petitioner violated that condition of probation, and the circuit court executed sentence (Respondent's Exhibit B). In the March 22, 2010 amended petition for writ of habeas corpus, petitioner alleges that his custody is unlawful for the reasons detailed in his amended Rule 29.15 motion (Petition, page 2). Review of Respondent's Exhibit C, the docket sheet from the post-conviction proceeding (from the CaseNet Service) reveals the post-conviction proceeding is pending in the Jackson County Circuit Court. Because state habeas is not designed by the Missouri Supreme Court to allow multiple and duplicative litigations, State ex rel. Simmons v. White, 866 S.W.2d 443 (Mo. banc 1993), the petition for writ of state habeas corpus should be denied. Petitioner can challenge the lawfulness of his custody through the post-conviction proceeding.

Conclusion

WHEREFORE, for the reasons herein stated, respondent prays that the Court deny the petition for writ of habeas corpus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 9 day of April, 2010, to:

Denny R. Hardin, 186144
Moberly Correctional Center
P.O. Box 7
S. 63 Bus. Highway
Moberly, MO 65270

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Stephen D. Hawke
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