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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROBERT GARBER,	)	Case No. CV 10-6694-DDP (RNB)
	)	
Petitioner,	)	ORDER TO SHOW CAUSE
	)	
vs.	)	
	)	
THE SUPERIOR COURT OF	)	
LOS ANGELES COUNTY,	)	
	)	
Respondent.	)	

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On September 24, 2010, petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody herein. It appears from the face of the Petition that it is directed to a conviction sustained in Los Angeles County Superior Court on March 14, 2007, for which petitioner was sentenced on March 17, 2007 to a probationary term of five years. It further appears from the face of the Petition that the California Court of Appeal subsequently reduced petitioner’s probationary term to three years.

Subject matter jurisdiction over a habeas petition exists only when, at the time the petition is filed, the petitioner is “in custody” under the conviction challenged in the petition. See Maleng v. Cook, 490 U.S. 488, 490-91, 109 S. Ct. 1923, 104 L. Ed. 2d 540 (1989); Carafas v. LaVallee, 391 U.S. 234, 238, 88 S. Ct. 1556, 20 L. Ed. 2d 554 (1968); Fowler v. Sacramento County Sheriff’s Dep’t, 421 F.3d 1027, 1033 n.5 (9th Cir. 2005); see also 28 U.S.C. §§ 2241(c)(3), 2254(a). A habeas petitioner does


1 not remain “in custody” once the sentence imposed for the conviction has “fully  
2 expired.” See Maleng, 490 U.S. at 491. However, a petitioner is “in custody” for the  
3 purposes of habeas jurisdiction while he remains on probation. See Chaker v. Crogan,  
4 428 F.3d 1215, 1219 (9th Cir. 2005); Fowler, 421 F.3d at 1033 n.5; United States v.  
5 Spawr Optical Research, Inc., 864 F.2d 1467, 1470 (9th Cir. 1988).

6 The burden of establishing subject matter jurisdiction rests with the party  
7 seeking to invoke the district court’s jurisdiction. See, e.g., Ashoff v. City of Ukiah,  
8 130 F.3d 409, 410 (9th Cir. 1997); Thornhill Pub. Co. v. General Tel. & Elec. Corp.,  
9 594 F.2d 730, 733 (9th Cir. 1979); Johnson v. Washington, 2009 WL 151284, \*6  
10 (W.D. Wash. Jan. 20, 2009) (habeas case). Moreover, the absence of subject matter  
11 jurisdiction may be raised by a district court sua sponte. See Schwarzer, Tashima &  
12 Wagstaffe, Federal Civil Procedure Before Trial ¶ 2:18 (2010 rev. ed.).

13 Here, the Court notes that, if petitioner’s three-year probationary term is  
14 measured from March 17, 2007, the date of his sentence, petitioner no longer was on  
15 probation on September 24, 2010, when he filed the Petition herein. It therefore  
16 appears to the Court that the Petition is subject to dismissal for lack of subject matter  
17 jurisdiction. See Reiner v. Remington, 217 Fed. Appx. 681, 682 (9th Cir. 2007) (now  
18 citable for its persuasive value pursuant to Ninth Circuit Rule 36-3) (affirming district  
19 court’s dismissal of habeas petition for lack of subject matter jurisdiction where the  
20 petitioner’s probation expired prior to the filing of the petition).

21 IT THEREFORE IS ORDERED that, on or before October 22, 2010, petitioner  
22 show cause in writing, if any he has, why this action should not be summarily  
23 dismissed for lack of subject matter jurisdiction.

24  
25 DATED: September 30, 2010



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27  
28 **ROBERT N. BLOCK**  
**UNITED STATES MAGISTRATE JUDGE**