

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

GARRETT MICHAEL MCCOY,

Petitioner,

v.

MATTHEW CLIFFORD;
SHAREHOLDERS; and
SUBORDINATE OFFICERS,

Respondents.

Case No. 1:24-cv-00432-DKG

INITIAL REVIEW ORDER

Petitioner Garrett Michael McCoy has filed a Petition for Writ of Habeas Corpus challenging Petitioner's state court conviction. *See* Dkt. 3. Petitioner is in the legal custody of the Idaho Department of Correction ("IDOC") but is physically confined in the Ada County Jail. *Id.*; *see also* <https://www.idoc.idaho.gov/content/prisons/resident-client-search/details/79829> (accessed Oct. 25, 2024).

The Court now reviews the Petition to determine whether it is subject to summary dismissal pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases ("Habeas Rules"). Having reviewed the record, and otherwise being fully

informed, the Court enters the following Order directing Petitioner to file an amended petition if Petitioner intends to proceed.

REVIEW OF PETITION

1. Standard of Law for Review of Petition

Federal habeas corpus relief under 28 U.S.C. § 2254 is available to petitioners who show that they are held in custody under a state court judgment and that such custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2254(a). The Court is required to review a habeas corpus petition upon receipt to determine whether it is subject to summary dismissal. Habeas Rule 4.

2. Discussion

In the Fourth Judicial District Court in Ada County, Idaho, Petitioner was convicted of grand theft, along with a persistent violator sentencing enhancement. Petitioner was sentenced to a prison term of four years fixed and ten years indeterminate. Petitioner pursued a direct appeal as well as state postconviction remedies. Dkt. 3 at 1–5.

In the instant Petition for Writ of Habeas Corpus, Petitioner brings claims of ineffective assistance of counsel and of trial error with respect to allegedly false or altered evidence. *Id.* at 5–8. However, Petitioner has not identified an appropriate respondent.

Petitioner names the Ada County Sheriff Matthew Clifford as a respondent, along with unidentified “Shareholders” and “Subordinate Officers.” Dkt. 3 at 1. Under Habeas Rule 2(a), the proper respondent in a habeas corpus action is the “officer who has custody” of the petitioner. In the ordinary case, this officer is “the warden of the facility where the prisoner is being held.” *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).

But here, though Petitioner is currently held in the Ada County Jail pursuant to an agreement with the IDOC, he remains in the *legal* custody of the IDOC. In such a case, the proper respondent is Josh Tewalt, the current director of the IDOC. *See Ziegler v. Washington*, No. C10-5263 BHS/KLS, 2010 WL 2331030, at *1 (W.D. Wash. June 10, 2010) (unpublished) (“Because [petitioner] is in custody pursuant to a Washington state court judgment, but is currently housed in an out-of-state prison, he should name [the] Secretary of the Washington Department of Corrections as the respondent in his habeas petition.”).

In any amended petition, Petitioner must name an appropriate respondent.

ORDER

IT IS ORDERED:

1. Petitioner’s Application to Proceed in Forma Pauperis (Dkt. 1) is GRANTED. Petitioner must pay the \$5.00 filing fee when Petitioner next receives funds in Petitioner’s inmate trust account.
2. Because an amended petition is required for Petitioner to proceed, all other pending motions (Dkts. 5, 7, and 8) are DENIED without prejudice.
3. Within 28 days after entry of this Order, Petitioner must file an amended petition as described above. If Petitioner fails to file a timely amended petition, or if it appears from the face of the amended petition that Petitioner is not entitled to relief, this case may be reassigned to a district judge for consideration of dismissal.

4. The Clerk of Court will provide Petitioner with a form § 2254 petition, and Petitioner is encouraged and expected to use this form in drafting an amended petition.



DATED: April 14, 2022

A handwritten signature in black ink, reading "Debora K. Grasham". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable Debora K. Grasham
United States Magistrate Judge