

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

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|----------------------|---|--------------------|
| CLINT PHILLIPS, III, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 4:14CV1884 JAR |
| |) | |
| STATE OF MISSOURI, |) | |
| |) | |
| Respondent, |) | |

MEMORANDUM AND ORDER

This matter is before the Court on petitioner’s petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition is dismissed for lack of jurisdiction.

Petitioner challenges a 2007 conviction for marijuana possession. Missouri v. Phillips, III, No. 0622-CR01611 (City of St. Louis). Petitioner was sentenced to five years’ imprisonment, but the sentence was suspended and he was placed on probation. Petitioner’s probation was revoked in February 2011, and he was imprisoned. Petitioner has since been released from prison, and he is no longer in custody of the Missouri Department of Corrections.

District courts have jurisdiction to entertain petitions for habeas relief only from persons who are “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). The custody requirement is fulfilled when a petitioner is in custody “under the conviction or sentence under attack at the time his petition is filed.” Maleng v. Cook, 490 U.S. 488, 490-91 (1989). Where, as is the case here, the sentence under challenge has fully expired, the custody requirement is not met. Id.

Petitioner argues that the case should not be dismissed because his conviction was unlawful. However, even if true, such allegations do not give the Court jurisdiction in this case.

As a result, this matter is dismissed for lack of jurisdiction. See Fed. R. Civ. P. 12(h)(3); Rule 4 of the Rules Governing § 2254 Cases.

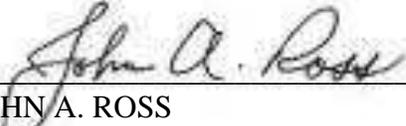
Finally, petitioner has failed to demonstrate that jurists of reason would find it debatable whether jurisdiction exists. Thus, the Court will not issue a certificate of appealability. 28 U.S.C. § 2253(c).

Accordingly,

IT IS HEREBY ORDERED that the petition is **DISMISSED**.

An Order of Dismissal will be filed separately.

Dated this 9th day of January, 2015.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE