

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ROCKY ALLEN HURYTA,	)	4:14CV3016
	)	
Petitioner,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
MENTAL HEALTH BOARD,	)	
	)	
Respondent.	)	

This matter is before the court on Petitioner Rocky Huryta’s Amended Petition for Writ of Habeas Corpus (“Amended Petition”) (Filing No. [7](#)). Huryta filed a Petition for Writ of Habeas Corpus (“Petition”) in this matter on January 22, 2014 (Filing No. [1](#)). On June 19, 2014, the court conducted an initial review of the Petition and determined that it was nonsensical. (*See* Filing No. [6](#).) The court directed Huryta to file an amended petition for writ of habeas corpus that clearly presented his claims for relief. Huryta filed his Amended Petition (Filing No. [7](#)) on July 10, 2014.

Huryta’s Amended Petition is nonsensical. As best as the court can tell, Huryta does not state any grounds on which he claims he is being held in violation of the Constitution, laws, or treaties of the United States. Moreover, Huryta is a nonprisoner. Federal law requires that a “habeas petitioner be ‘in custody’ under the conviction or sentence under attack at the time the petition is filed.” *Maleng v. Cook*, [490 U.S. 488, 490-91 \(1989\)](#) (*per curium*), citing [28 U.S.C. § 2254\(a\)](#). The “in custody” requirement is a jurisdictional requirement. *Id.* at [490](#). Here, it does not appear that Huryta is “in custody.” Regardless, his Petition and Amended Petition are nonsensical and do not state a basis for habeas corpus relief. Accordingly, the court will dismiss this matter without prejudice to reassertion of a habeas corpus petition that clearly sets forth Huryta’s claims for relief.

IT IS THEREFORE ORDERED that: This matter is dismissed without prejudice. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 4th day of August, 2014.

BY THE COURT:

s/ Joseph F. Bataillon  
United States District Judge

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