

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NEAL M. CATLIN,

Petitioner,

v.

THE STATE OF NEW YORK,

Respondent.

DECISION AND ORDER

Case No.: 07-CV-00641(M)

Petitioner Neal Catlin, an inmate acting *pro se*, filed a petition under 28 U.S.C. §2254 for a writ of habeas corpus on March 13, 2007 [1].¹ The parties have consented to proceed before a Magistrate Judge pursuant to 28 U.S.C. §636(c) [11]. For the following reasons, I order that the petitioner file an amended petition by November 20, 2009, or the petition will be dismissed for lack of jurisdiction.

Respondent argues, *inter alia*, that the petition must be dismissed because it fails to name the correct party, the person who has custody over petitioner, as a respondent, instead naming the People of the State of New York. Respondent's Memorandum of Law [8], Point I. Respondent argues that unless petitioner's custodian is named as the respondent, the court lacks personal jurisdiction over the party responsible for petitioner's current custodial status. *Id.* I agree.

Rule 2(a) of the "Rules Governing Section 2254 Cases in the United States District Courts" requires that "[i]f the petitioner is currently in custody under a state court judgment, the petition must name as respondent the state court officer who has custody". *See*

¹ Bracketed references are to CM/ECF docket entries.

also 28 U.S.C. §2242 (“An application for a writ of habeas corpus . . . shall allege . . . the name of the person who has custody over him”). “Absent an amended Petition naming the proper respondent, this Court lack[s] jurisdiction over this matter”. Green v. Behrle, 2008 WL 4826321, *2 n. 1 (W.D.N.Y. 2008) (Scott, M.J.). Therefore, petitioner is ordered to amend his petition to name the proper respondent.²

If petitioner names the proper respondent, I will consider the amended petition under advisement based upon the prior filings, including respondent’s answer and memorandum of law [7 and 8]. However, if petitioner fails to file such an amendment by November 20, 2009, I will dismiss the petition [1] for lack of jurisdiction.

CONCLUSION

For these reasons, it is hereby ORDERED that the petitioner shall file and serve an amended petition naming the proper respondent on or before November 20, 2009. Failure to do so shall result in dismissal of the petition.

SO ORDERED.

DATED: October 27, 2009

/s/ Jeremiah J. McCarthy
JEREMIAH J. MCCARTHY
United States Magistrate Judge

² All other aspects of the petition [1] shall remain the same.

