

DOCKET NO. CV24-5001679-S

STATE OF CONNECTICUT SUPERIOR COURT  
: SUPERIOR COURT  
: G.A. 19

JAKE RATCHES

2024 MAY -6 P 2: 03 JUDICIAL DISTRICT  
OF TOLLAND

V.

COMMISSIONER OF CORRECTION

MAY 6, 2024

**MEMORANDUM OF DECISION ON MOTION TO DISMISS**

Jake Ratches, the petitioner, filed the instant petition for a writ of habeas corpus challenging his conviction and the imposition of a twenty-five year standing criminal protective order. Upon a review of the petition, it is dismissed because Ratches was not in custody at the time he filed the petition.

**I. FACTUAL BACKGROUND**

On or about April 28, 2023, Ratches entered a guilty plea in the New Haven Superior Court, G.A. 23. Judge Zagaja sentenced him to an unconditional discharge and imposed a standing criminal protective order. Ratches filed the instant petition on January 16, 2024. Counsel was appointed for Ratches and the court issued notice of a hearing to determine why the petition should not be dismissed. That hearing was conducted on May 3, 2024.

**II. DISCUSSION**

Practice Book § 23-29 provides in relevant part:

The judicial authority may, at any time, upon its own motion or upon motion of the respondent, dismiss the petition, or any count thereof, if it determines that:

- (1) the court lacks jurisdiction.

This court “lacks discretion to consider the merits of a case over which it is without jurisdiction.” (Internal citations and quotation marks omitted.) Green v. Commissioner of Correction, 184 Conn. App. 76, 194 A.3d 857, cert. denied, 330 Conn. 933, 195 A.3d 383 (2018). “A

motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction.” (Internal quotation marks omitted.) Filippi v. Sullivan, 273 Conn. 1, 8, 866 A.2d 599 (2005). “In ruling upon whether a complaint survives a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader.” (Internal citations and quotation marks omitted.) Lebron v. Commissioner of Correction, 274 Conn. 507, 512, 876 A.2d 1178 (2005), overruled on other grounds by State v. Elson, 311 Conn. 726, 91 A.3d 862 (2014).

A. Custody requirement in petitions for writ of habeas corpus

In order for this court to have jurisdiction, it is a prerequisite that “the petitioner is in custody at the time that the habeas petition is filed.” Young v. Commissioner of Correction, 104 Conn. App. 188, 191, 932 A.2d 467 (2007), cert. denied, 285 Conn. 907, 942 A.2d 406(2008). A “petitioner whose conviction has expired fully prior to the filing of a habeas petition is not in ‘custody’ on that conviction within the meaning of § 52–466.”<sup>1</sup> Lebron v. Commissioner of Correction, supra, 274 Conn. 530. The “history and purpose of the writ of habeas corpus establish that the habeas court lacks the power to act on a habeas petition absent the petitioner's allegedly unlawful custody;” id., 526; and so “the custody requirement in § 52–466 is jurisdictional.” Id. “Although the custody requirement has been construed liberally [...] it has never been extended to the situation where a habeas petitioner suffers no present restraint from a conviction.” (Citation omitted; internal quotation marks omitted.) Ajadi v. Commissioner of Correction, 280 Conn. 514, 538, 911 A.2d 712 (2006); Maleng v. Cook, 490 U.S. 488, 491–93, 109 S. Ct. 1923, 104 L. Ed. 2d 540 (1989). The “in custody” requirement may be satisfied by a petitioner who is on probation. Guerra

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<sup>1</sup> General Statutes § 52-466 (a) (1) provides: “An application for a writ of habeas corpus, other than an application pursuant to subdivision (2) of this subsection, shall be made to the superior court, or to a judge thereof, for the judicial district in which the person whose custody is in question is claimed to be illegally confined or deprived of such person's liberty.”

v. State, 150 Conn. App. 68, 76, 89 A.3d 1028, cert. denied, 314 Conn. 903, 99 A.3d 1168 (2014); Neto v. Warden, Superior Court, judicial district of Tolland, Docket No. CV-15-4007685-S (October 9, 2018, Kwak, J.) (“‘in custody’ requirement may be satisfied by a petitioner who is serving a prison sentence, is on parole, or is on probation”).

#### B. Unconditional Discharge

General Statutes § 53a-34 governs unconditional discharges. Pursuant to that statute:

- (a) The court may impose a sentence of unconditional discharge in any case where it is authorized to impose a sentence of conditional discharge under section 53a-29, if the court is of the opinion that no proper purpose would be served by imposing any condition upon the defendant's release.
- (b) When the court imposes a sentence of unconditional discharge, the defendant shall be released with respect to the conviction for which the sentence is imposed without imprisonment, probation supervision or conditions. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

#### C. Standing Criminal Protective Order

General Statutes § 53a-40e gives the trial court the authority to impose standing criminal protective orders. Our caselaw is clear that “a standing criminal protective order is separate and distinct from the criminal judgment setting forth the defendant's sentence. A standing criminal protective order neither increases the term of imprisonment already imposed upon the defendant nor imposes an additional fine and is not punitive in law or in fact.” (Cleaned up) State v. Micles, 221 Conn. App. 164, 301 A.3d 1063, cert. granted in part, 348 Conn. 920, 303 A.3d 1195 (2023).

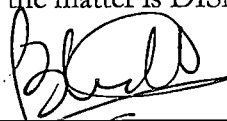
#### D. Analysis

Ratches’ sentence of an unconditional discharge renders him not in custody at the time of the filing of this petition. There is no restraint to his liberty upon the imposition of an unconditional discharge. See Henderson v. Warden, Superior Court, judicial district of Tolland, docket no. CV124004554 (Newson, J., Jan. 9, 2013). While there is no caselaw in this state determining whether a

standing criminal protective order satisfies the custody requirement, the nature of the order itself makes it clear that it is not punitive in nature and therefore cannot be said to be "custody" for jurisdictional purposes. Other courts have agreed with this conclusion. See e.g. Vega v. Schneiderman, 861 F.3d 72, 75 (2d Cir. 2017) (state court order of protection did not satisfy custody requirement of habeas statute).

### III. CONCLUSION

The court lacks subject matter jurisdiction over this case because Ratches was not in custody at the time his application for writ of habeas corpus was filed. Therefore, the matter is DISMISSED.

  
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Bhatt, J.

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Judge Bhatt

by: Kathryn Stackpole, First Asst. Clerk

5/6/2024