

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

WALKER WHATLEY,	)	
Petitioner,	)	
vs.	)	
	)	No. 1:16-cv-134-TWP-MPB
DUSHAN ZATECKY, Superintendent,	)	
	)	
Respondent.	)	

**Order Appointing Counsel and Directing Further Proceedings**

**I.**

The Indiana Community Defender is **appointed** to represent petitioner Walker Whatley until it is determined whether he satisfies the “in custody” requirement of 28 U.S.C. § 2254(a). This inquiry shall proceed in the most expedited fashion possible.

**II.**

Mr. Whatley is a state prisoner serving the executed portion of a sentence imposed in 2008 for a drug conviction. He had previously been in state custody pursuant to a 2002 drug conviction. Whatley was apparently discharged from custody on the 2002 conviction in October 2010.

Whatley’s custodian argues based on the foregoing circumstances that Whatley cannot meet the “in custody” requirement of the federal habeas statute. *See Lackawanna Cnty. Dist. Attn’y v. Coss*, 532 U.S. 394, 401 (2001).

There is one missing piece of the custody puzzle here. That is the piece which informs whether the sentence for Whatley’s 2008 conviction was ordered to be served consecutive to the sentence imposed for the 2002 conviction. It is important to have this piece of the puzzle because

satisfying the “in custody” requirement is a jurisdictional requirement. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968).

The respondent shall therefore have **through September 19, 2016** in which to **supplement** the return to show cause by documenting whether Mr. Whatley’s 2008 conviction was ordered to be served consecutive to the sentence imposed for the 2002 conviction. If this short period of time prevents the respondent from *documenting* the answer to the question posed, it will suffice in the interim if the respondent simply *reports* what information is learned and how, if at all, that affects the respondent’s position in this action vis-à-vis Mr. Whatley satisfying the “in custody” requirement of 28 U.S.C. § 2254(a).

### III.

The assigned Magistrate Judge is requested to **schedule a conference with counsel for the parties** as soon after September 19, 2016 as is convenient for the purpose of discussing with counsel whether there is a dispute regarding the “in custody” requirement and if there is what measures are appropriate to resolve that dispute.

IT IS SO ORDERED.

Date: 9/7/2016



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TANYA WALTON PRATT, JUDGE  
United States District Court  
Southern District of Indiana

Distribution:

WALKER WHATLEY  
113772  
PENDLETON CORRECTIONAL FACILITY  
Inmate Mail/Parcels  
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PENDLETON, IN 46064

Electronically Registered Counsel

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Hon. Matthew P. Brookman