

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
GEORGIA

Turner v. Burgess

Turner · No. 7:25-cv-118-WLS-ALS · Decided January 7, 2026

SUMMARY

The United States District Court for the Middle District of Georgia grants Olan Girard Turner’s motion to proceed in forma pauperis in his federal habeas action. The Court orders Turner to recast his petition under 28 U.S.C. § 2254 and explain whether he was in custody under the challenged conviction and whether he exhausted available state remedies. The Court warns that failure to comply within fourteen days may result in dismissal and directs that there be no service of process until further order.

CASE DETAILS

COURT	United States District Court for the Middle District of Georgia
WRITING FOR THE COURT	Alfreda L. Sheppard
JURISDICTION	United States District Court for the Middle District of Georgia
DECIDED	January 7, 2026
DOCKET	7:25-cv-118-WLS-ALS
DISPOSITION	other
PROCEDURAL POSTURE	A pro se petitioner filed a federal habeas petition challenging a Georgia state-court burglary conviction and moved to proceed in forma pauperis. The district court granted IFP status but ordered him to recast the petition under 28 U.S.C. § 2254 and provide information establishing custody and exhaustion of state remedies.
PRECEDENTIAL VALUE	Unknown
PARTIES	Olan Girard Turner, Jr. v. Captain Jerome Burgess

TOPICS

[federal habeas corpus](#) [post-conviction relief](#) [pleadings](#) [civil procedure](#)

PRACTICE AREAS

[Federal habeas corpus](#) [Post-conviction relief](#) [Federal civil procedure](#)

QUESTIONS PRESENTED

1. Whether the court could proceed with a federal habeas challenge when it was unclear whether the petitioner was in custody under the conviction or sentence being challenged.
2. Whether the petitioner had exhausted available state remedies before seeking federal habeas relief.
3. Whether the petitioner should be required to recast his filing under 28 U.S.C. § 2254, the statute governing federal challenges to state-court convictions.

HOLDINGS

1. Federal habeas jurisdiction requires the petitioner to be in custody under the conviction or sentence challenged when the petition is filed; custody may include probation, parole, or bail, not only incarceration.
2. A petitioner challenging a state conviction generally must exhaust available state remedies before proceeding with a federal habeas action.
3. A federal petition challenging a state-court conviction should be brought under 28 U.S.C. § 2254, and the petitioner may be required to file a superseding petition on the court's standard form.

KEY QUOTATIONS

“The federal habeas statute gives the United States district courts 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.’” (490)

“as requiring that the habeas petitioner be ‘in custody’ under the conviction or sentence under attack at the time his petition is filed.” (490-91)

FACTUAL BACKGROUND

Turner sought federal habeas relief from an August 20, 2025 Georgia conviction for first-degree burglary. He was apparently not incarcerated when he filed the federal action, although a footnote indicated that he might later have been held in the Thomas County Jail. His petition also suggested that he had not completed available state-court proceedings or received responses to motions asserting an innocence claim.

PROCEDURAL HISTORY

Turner filed a petition for federal habeas relief challenging his August 20, 2025 conviction in the Superior Court of Thomas County, Georgia. At filing, he apparently was not incarcerated, and his petition indicated that he had not received responses to motions filed in state court. The district court granted leave to proceed in forma pauperis, directed Turner to file a superseding petition on the court's standard § 2254 form, and warned that failure to comply could result in dismissal; service was deferred.

DISPOSITION

other

CASES CITED

- Maleng v. Cook, 490 U.S. 488, 490-91 (1989)
- Llovera-Linares v. Fla., 559 F. App'x 949, 951 (11th Cir. 2014)
- Stacey v. Warden, Appalachee Corr. Inst., 854 F.2d 401, 403 (11th Cir. 1988)
- Duvallon v. Fla., 691 F.2d 483, 485 (11th Cir. 1982)
- Dill v. Holt, 371 F.3d 1301, 1302 (11th Cir. 2004)
- Gore v. Crews, 720 F.3d 811, 815 (11th Cir. 2013)
- Turner v. Burgess, 7:25-cv-119-WLS-ALS (M.D. Ga. Sept. 24, 2025)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION OLAN GIRARD TURNER, JR.,: Petitioner,: v.: Case No. 7:25-cv-118-
WLS-ALS Captain JEROME BURGESS,: Respondent.: _____:
ORDER Before the Court is pro se Petitioner Olan Girard Turner's petition for federal habeas corpus relief challenging his August 20, 2025 conviction in the Superior Court of Thomas County, Georgia for burglary in the first degree.

(Doc. 1). Petitioner also moved for leave to proceed in forma pauperis ("IFP") in this case. (Doc. 2). Petitioner's filings show he cannot now pay the filing fee. Therefore, his motion to proceed IFP (Doc. 2) is GRANTED.

Although Petitioner appears to be challenging a state court conviction, he was not incarcerated at the time he filed this case. (Doc. 2, at 4). "The federal habeas statute gives the United States district courts 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.'" *Maleng v. Cook*, 490 U.S. 488, 490 (1989) (quoting 28 U.S.C. § 2241(c)(3)).

The Supreme Court of the United States has interpreted this language "as requiring that the habeas petitioner be 'in custody' under the conviction or sentence under attack at the time his petition is filed." *Id.* at 490- 91.

The "in-custody" requirement is jurisdictional. *Llovera-Linares v. Fla.*, 559 F. App'x 949, 951 (11th Cir. 2014) (citing *Stacey v. Warden, Appalachee Corr. Inst.*, 854 F.2d 401, 403 (11th Cir. 1988)). A petitioner does not necessarily need to be incarcerated to meet the "in custody" requirement, however; "[i]n the context of habeas proceedings, the 'in custody' requirement may also be met where a petitioner is on probation, parole or bail." *Duvallon v. Fla.*, 691 F.2d 483, 485 (11th Cir.

1982). It is unclear from his Petition whether Petitioner is "in custody" for purposes of federal habeas jurisdiction. Petitioner is also advised that he is required to exhaust all available state

remedies before he may go forward with this action in federal court. See *Dill v. Holt*, 371 F.3d 1301, 1302 (11th Cir. 2004); *Gore v. Crews*, 720 F.3d 811, 815 (11th Cir.

2013) (noting that a prisoner generally “cannot satisfy the exhaustion requirement if... he has failed to avail himself of ‘any available procedure’ by which he has the right to raise his claim in state court”). Upon cursory review of the Petition, it appears that Petitioner has not yet fully exhausted his remedies in the state courts. See, e.g., Doc. 1, at 2-3 (stating that he “file[d] an innocent claim” but has not yet “got a response for [his] filed motions”).

For these reasons, Petitioner is ORDERED to recast his Petition on one of the Court’s standard forms to seek habeas relief pursuant to 28 U.S.C. § 2254, which is the federal statute for challenging a state court conviction.

In his Recast Petition, Petitioner must explain why he is currently “in custody” for purposes of the conviction he is seeking to challenge. Petitioner must also explain each of the steps he has taken to fully exhaust his state court remedies.

The Clerk is DIRECTED to mail Petitioner copies of the appropriate forms for this purpose, marked with the case number of this case, that Petitioner should use to comply. The Recast Petition will supersede (take the place of) the initial Petition (Doc. 1). Petitioner should include each of his claims for relief in his Recast Petition, even if he has also included those claims in the documents he has already filed with the Court.

Petitioner must also notify the Court immediately in writing of any change in his mailing address and Petitioner is ADVISED that the failure to do so may result in the dismissal of this action.¹ If after considering the information in this Order, Petitioner does not wish to now pursue habeas relief, he should notify the Court of this and/or withdraw his petition within FOURTEEN (14) DAYS of the date shown on this Order.

Failure to fully and timely comply with this Order may result in the dismissal of Petitioner’s application for habeas relief. There will be no service of process in this case until further order. SO ORDERED, this 7th day of January, 2026. s/ ALFREDA L. SHEPPARD UNITED STATES MAGISTRATE JUDGE 1 It appears Petitioner may now be incarcerated at the Thomas County Jail, although it is not clear whether this incarceration is related to the conviction he is attempting to challenge in this action.

See <https://www.thomascountysheriff.com/inmate-roster/69176e3065797b24eb0b7b12> [<https://perma.cc/3CQG-JUTK>] (last visited Jan. 5, 2026). Petitioner should be sure to address whether his current incarceration is related to the conviction he is challenging in this case in his Recast Petition.

In addition, the Clerk is DIRECTED to mail Petitioner a copy of this Order and the required forms to Petitioner's address of record as well as what may be his current address at the Thomas County Jail. The Court also notes that Petitioner has pending before the Court a case filed pursuant to 42 U.S.C. 1983, *Turner v. Burgess*, 7:25-cv-119-WLS-ALS (M.D. Ga. Sept.

24, 2025). Petitioner should raise any claims concerning the conditions of his confinement in that case and not in the above-captioned action.