

STATE OF VERMONT

SUPERIOR COURT  
Windsor Unit

CIVIL DIVISION  
Docket No. 82-1-13 Wrcv

Joseph Laplante  
Plaintiff

v.

State of Vermont  
Defendant

**Decision on Motion to Dismiss for Lack of Standing**

On January 30, 2013, Plaintiff Joseph Laplante filed this petition for post conviction relief (PCR). Plaintiff asks the Court to vacate his August 10, 2012 conviction of operating a motor vehicle while intoxicated. In the underlying criminal proceeding, Plaintiff changed his plea to guilty and received a fine-only disposition of his case. Plaintiff now argues in his PCR petition that due to a brain tumor, he was mentally handicapped and did not fully understand the rights and warnings explained to him when he changed his plea.<sup>1</sup>

On May 17, 2013, the State filed this motion to dismiss the PCR petition. The State correctly points out that the Court lacks jurisdiction to consider this petition.

A person “who is in custody under sentence of a court” may petition for post conviction relief. 13 V.S.A. § 7131. The Vermont Supreme Court has identified what persons qualify to file a PCR petition under the statute. *In re LaMountain*, 170 Vt. 642 (2000). Importantly, a court lacks jurisdiction to decide a PCR petition if the petitioner is not “in custody.” *Id.* at 643. The standard to determine whether a person is “in custody” involves two inquiries. *Id.* First, whether the person is under mandatory supervision and second, whether the person faces the possibility of imminent incarceration. *Id.*; *State v. Wargo*, 168 Vt. 231, 234 (1998). Plaintiff has not provided a reason to believe that either of the above circumstances apply to his case. His complaint asserts that his change of plea resulted in only a fine. Moreover, the record indicates that he is currently a Massachusetts resident, which confirms that he is not under the supervision

**FILED**

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<sup>1</sup> The Court notes that Plaintiff failed to file a timely Notice of Appeal.

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of the State of Vermont. For the above reasons, the Court lacks jurisdiction to decide this PCR petition.

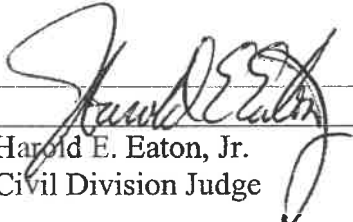
Plaintiff may have other options to challenge his conviction. A criminal defendant may request to withdraw a plea of guilty at any time as long as his or her sentence does not include a term of imprisonment. V.R.Cr.P. 32(d). A change of plea is not granted automatically, however. V.R.Cr.P. 32 (d) (a court may only permit a withdrawal of a plea to correct "manifest injustice").

**Order**

The State's Motion to Dismiss is **granted**.

Dated at Woodstock this 27th day of June, 2013.

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Harold E. Eaton, Jr.  
Civil Division Judge

**FILED**

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Windsor Civil Division

ENTRY REGARDING MOTION

Laplane vs. State  
[Kainen]

82-1-13 Wrcv

Title: Motion to Dismiss for Lack of Standing, No. 7  
Filed on: May 17, 2013  
Filed By: Kainen, Michael R., Attorney for:  
Defendant State

Response: NONE

☒ Granted Compliance by \_\_\_\_\_

☐ Denied

☐ Scheduled for hearing on: \_\_\_\_\_ at \_\_\_\_\_; Time Allotted \_\_\_\_\_

☐ Other

See attached.

  
\_\_\_\_\_  
Judge

  
\_\_\_\_\_  
Date

Date copies sent to: 6/28/13

Clerk's Initials ALW

Copies sent to:

Plaintiff Joseph Laplane

Attorney Michael R. Kainen for Defendant State

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Windsor Civil Division

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ENTRY REGARDING MOTION

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Laplane vs. State  
[Kainen]

82-1-13 Wrcv

Title: Motion to Dismiss-Failure to Follow Court Order, No. 8

Filed on: May 17, 2013

Filed By: Kainen, Michael R., Attorney for:  
Defendant State

Response filed on 05/28/13 by Attorney Pro Se

☒ Granted Compliance by \_\_\_\_\_

☒ Denied

☐ Scheduled for hearing on: \_\_\_\_\_ at \_\_\_\_\_; Time Allotted \_\_\_\_\_

☐ Other

*Moat.*

  
Judge

*6/27/13*  
Date

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Date copies sent to: *6/28/13*

Clerk's Initials *ALW*

Copies sent to:

Plaintiff Joseph Laplane

Attorney Michael R. Kainen for Defendant State

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