

APR 18 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIKE MURPHY,

Petitioner - Appellant,

v.

BUTCH OTTER, Idaho Governor; et al.,

Respondents - Appellees.

No. 08-35363

D.C. No. 3:07-CV-00536-BLW

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief District Judge, Presiding

Submitted April 14, 2011**
Seattle, Washington

Before: KLEINFELD, TASHIMA, and SILVERMAN, Circuit Judges.

Idaho state prisoner Mike Murphy appeals the district court's summary dismissal of his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253 and we dismiss the appeal as moot.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Murphy contends that the State violated his rights under the Convention on the Transfer of Sentenced Persons, March 21, 1983, 35 U.S.T. 2867, the Treaty Between the United States of America and Canada on the Execution of Penal Sentences, U.S.-Can., March 2, 1977, 30 U.S.T. 6263, and the Fourteenth Amendment's Due Process Clause. In his opening brief and supplemental opening brief on appeal, Murphy only argued the State's failure to issue a decision on his transfer application. We decline to address other issues not raised in the opening brief. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (“[O]n appeal, arguments not raised by a party in its opening brief are deemed waived.”).

After Murphy filed his supplemental opening brief, but before the State filed its answering brief, the Governor of Idaho issued his decision denying Murphy's transfer application. Because Murphy has already received the relief he seeks—a decision on his application—we cannot grant any effectual relief and this appeal is moot. *See Calderon v. Moore*, 518 U.S. 149, 150 (1996).

Accordingly, this appeal is DISMISSED. The State's February 28, 2011 Motion to Expand the Record on Appeal is GRANTED. Murphy's March 15, 2011 Motion for Extension of Time to Object to Motion to Expand the Record is GRANTED, and his Objection to Motion to Expand the Record is filed. The State's March 17, 2011 Motion to Strike is DENIED as moot.