



1 In this case, petitioner challenges a September 7, 2005 judgment of conviction that  
2 resulted in a sentence of 285 days in county jail and three years informal probation. *See* Petition,  
3 ECF No. 1 at 2 (referencing Placer County Superior Court Case No. 6243571); Resp't's Lodged  
4 Doc. 1 (Opinion filed in Placer County Superior Court case number 62-043571); Resp't's Lodged  
5 Doc. 2 at 2 (Petition for writ of habeas corpus filed in California Court of Appeal). Petitioner  
6 filed the instant action nearly ten years later, on April 29, 2015. ECF No. 1. Under the terms of  
7 petitioner's sentence, his custody would have ended long before he filed his federal petition.  
8 Thus, petitioner cannot challenge the 2005 judgment and sentence because he is no longer in  
9 custody as a result of that judgment. *See Woodall v. Beauchamp*, 450 F. App'x 655, 657 (9th Cir.  
10 2011) (habeas petitioner must be in custody as a result of the challenged conviction, not on  
11 unrelated charges). Because petitioner was not in custody pursuant to the judgment of conviction  
12 when he filed his petition, this action must be dismissed for lack of subject matter jurisdiction.

13 Accordingly, IT IS HEREBY RECOMMENDED that respondent's motion to dismiss  
14 (ECF No. 11) be granted and that this action be dismissed for lack of subject matter jurisdiction.

15 These findings and recommendations are submitted to the United States District Judge  
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
17 after being served with these findings and recommendations, any party may file written  
18 objections with the court and serve a copy on all parties. Such a document should be captioned  
19 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
20 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
21 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In  
22 his objections petitioner may address whether a certificate of appealability should issue in the  
23 event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing  
24 § 2254 Cases (the district court must issue or deny a certificate of appealability when it enters a  
25 final order adverse to the applicant).

26 Dated: January 6, 2016.

27   
28 EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE