

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

CARL EMERSON SLOAN,

Petitioner,

vs.

LOUIS WINN,

Respondent.

No. CIV 07-603-TUC-CKJ

ORDER

Pending before the Court is Petitioner’s Petition under 28 U.S.C. § 2241 for a Writ of Habeas Corpus by a Person in Federal Custody. Respondent has filed a Return and Answer and Petitioner has filed a Reply.

Factual and Procedural Background

On July 28, 2003, Petitioner Carl Emerson Sloan (“Sloan”) was sentenced to a one year and one day term of incarceration for a violation of supervised release in the United States District Court for the Central District of California. Sloan’s sentence was ordered to be served consecutively to the sentence he was currently under, a sentence imposed by the State of Tennessee, Court of DeKalb.

Sloan was committed to federal custody on May 15, 2007. Sloan was incarcerated at FCI Tucson, Arizona, at the time of the filing of the Petition. However, the Bureau of Prisons Inmate Locator indicates that Sloan was released from federal custody on March 28,

1 2008.¹

2 On November 15, 2007, Sloan filed his Petition under 28 U.S.C. § 2241 for a Writ of
3 Habeas Corpus by a Person in Federal Custody. Sloan asserts that additional time spent in
4 custody should be credited against his federal sentence. On December 20, 2007, Respondent
5 filed a Return and Answer. On December 28, 2007, Sloan filed a Reply.

6
7 *Jurisdiction of the Court*

8 "Federal courts are always 'under an independent obligation to examine their own
9 jurisdiction,' and a federal court may not entertain an action over which it has no
10 jurisdiction." *Hernandez v. Campbell*, 204 F.3d 861, 865 (9th Cir. 2000), *quoting FW/PBS,*
11 *Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990). In the case of a habeas petition, such
12 jurisdiction is dependent upon a proper characterization of the petition.

13 "Generally, motions to contest the legality of a sentence must be filed under § 2255
14 in the sentencing court, while petitions that challenge the manner, location or condition of
15 a sentence's execution must be brought pursuant to § 2241 in the custodial court."
16 *Hernandez*, 204 F.3d at 864. Therefore, this Court's jurisdiction depends upon a proper
17 characterization of Sloan's claims. Sloan is challenging the manner, location or condition
18 of the execution of his sentence. *See e.g., Rogers v. United States*, 180 F.3d 349 (1st Cir.
19 1999) (section 2241 petition is appropriate vehicle to challenge the correctness of a jail-time
20 credit determination, once administrative remedies have been exhausted). Such a challenge
21 must be brought pursuant to § 2241 in the custodial court.

22 However, the Bureau of Prisons Inmate Locator indicates that Sloan was released
23 from federal custody on March 28, 2008. Sloan does not challenge the validity of his
24 conviction in his Petition; rather, Sloan only challenges the execution of his sentence – the
25

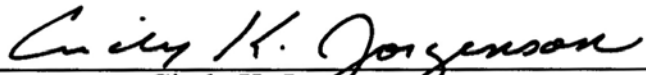
26
27 ¹The Court notes that on February 29, 2008, Sloan filed a Notice of Change of
28 Address which indicated that his residence, at that time, was the New Beginnings CCC.

1 failure to receive additional time credits has resulted in his release from custody being
2 delayed.² Sloan having already been released from custody, the Petition is now moot and
3 dismissal is appropriate. *North Carolina v. Rice*, 404 U.S. 244, 246, 92 S.Ct. 402, 30
4 L.Ed.2d 413 (1971) (“federal courts are without power to decide questions that cannot affect
5 the rights of litigants in the case before them”); *Mitchell v. Dupnick*, 75 F.3d 517, 528 (9th
6 Cir. 1996); *Fendler v. U.S. Bureau of Prisons*, 846 F.2d 550, 555 (9th Cir. 1988) (finding that
7 release of petitioner on parole mooted his petition seeking earlier release date on the grounds
8 contending that Parole Commission had improperly delayed his release date).

9
10 Accordingly, IT IS ORDERED:

- 11 1. The Clerk of the Court is directed to correct the caption to indicate the correct
12 name of Respondent is Louis Winn.
- 13 2. The Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 is
14 DISMISSED AS MOOT.
- 15 3. The Clerk of the Court shall enter judgment and shall then close its file in this
16 matter.

17 DATED this 3rd day of February, 2009.

18
19 
20 _____
21 Cindy K. Jorgenson
22 United States District Judge
23
24

25 _____
26 ²Where a habeas petition challenges the validity of a conviction, the petition is not
27 mooted by the petitioner’s release from custody because of the continuing collateral
28 detriment of petitioner having a conviction on his record. *Spencer v. Kemna*, 523 U.S. 1, 7,
118 S.Ct. 978, 140 L.Ed.2d 43 (1998).