

1 District Court issued its initial screening order, dismissing Ground Three as repetitive,
2 and calling for an answer from Respondents on Grounds One, Two, and Four of the
3 Petition. (Doc. No. 3.)

4 On July 15, 2007, Respondents filed an answer explaining that, on June 9, 2009,
5 Warden Winn took Petitioner off the suspect list for drug testing. (Doc. No. 9.)
6 Additionally, on June 22, 2009, Discipline Hearing Officer Petricka conducted a re-
7 hearing of Petitioner's incident report from FCI, Florence, Colorado for Refusing to
8 Provide a Urine Sample and found that, based on Petitioner's Generalized Anxiety
9 Disorder, it appears his refusal to provide a urine sample was not intentional. Based on
10 this evidence, DHO Petricka expunged the incident report and restored the 41 days of
11 Good Conduct Time which had previously been forfeited as a result of that incident
12 report. (Answer, at 2-3.) Finally, a plan is in place to accommodate Petitioner's
13 anxiety disorder in the event he is randomly selected to provide a urine sample,
14 allowing Petitioner extra time in a dry cell if needed..

15 Respondent concludes that these corrective steps appear to address all three of
16 Petitioner's requests for relief contained in his Petition. Respondents therefore request
17 that the Court dismiss the petition as moot.

18 Petitioner agrees with Respondent's request that this case be dismissed, and
19 agrees that he has been granted the relief requested. A case becomes moot when "it no
20 longer present[s] a case or controversy under Article III, § 2, of the Constitution."
21 *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). Although Petitioner suggests that the Court
22 consider retaining ancillary jurisdiction until the expiration of Petitioner's term of
23 incarceration, in the event Petitioner is transferred to another facility, or new
24 supervisors or hires are unfamiliar with Petitioner's issue. A court must have
25 jurisdiction over a case or controversy before it may assert jurisdiction over ancillary
26 claims. *See Peacock v. Thomas*, 516 U.S. 349, 355 (1996)(citations omitted). Because
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1 the Magistrate Judge recommends that this case be dismissed as moot, the Court would
2 have no jurisdiction to assert over any ancillary claim.

3 Accordingly,

4 This Court recommends that the Petition for Writ of Habeas Corpus (Doc. No.
5 1) be DISMISSED.

6 Pursuant to 28 U.S.C. §636(b), any party may serve and file written objections
7 within ten days after being served with a copy of this Report and Recommendation. A
8 party may respond to another party's objections within ten days after being served with
9 a copy thereof. Fed.R.Civ.P. 72(b). If objections are filed the parties should use the
10 following case number: **CIV 09-0183-TUC-DCB**.

11 DATED this 31st day of August, 2009.

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Bernardo P. Velasco
United States Magistrate Judge

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