

JS-6

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

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN VALERIO,

Petitioner,

v.

SCOTT FRAUENHEIM, Warden,

Respondent.

Case No. 2:17-cv-07706-MAA

**MEMORANDUM DECISION
AND ORDER DISMISSING AS
MOOT PETITION FOR WRIT
OF HABEAS CORPUS**

I. INTRODUCTION AND BACKGROUND

On October 20, 2017, Petitioner John Valerio (“Petitioner”) filed a counseled Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. (“Petition,” ECF No. 1.) The Petition challenges a 2014 judgment of conviction Petitioner sustained in the Los Angeles County Superior Court. (“Petition MP&A,” ECF No. 1-2, at 9-10.)¹ On November 25, 2019, this Court entered an Order denying the Petition on the merits. (ECF No. 44.) The same day, the Court entered judgment denying the Petition with prejudice. (ECF No. 45.)

¹ Pinpoint citations of documents in this Order refer to the page numbers appearing in the ECF-generated headers.

1 On March 26, 2021, the United States Court of Appeals for the Ninth Circuit
2 granted a certificate of appealability and set a briefing schedule for Petitioner’s
3 appeal. (See ECF No. 49.) Order, *Valerio v. Frauenheim*, No. 19-56480, ECF No.
4 2 (9th Cir. Mar. 26, 2021). On October 1, 2021, Petitioner’s counsel filed a notice
5 informing the Ninth Circuit and Respondent’s counsel of Petitioner’s death.
6 Notice, *Valerio v. Frauenheim*, No. 19-56480, ECF No. 15 (9th Cir. Oct. 1, 2021).
7 On November 12, 2021, the Ninth Circuit issued an order dismissing the appeal as
8 moot in light of Petitioner’s death and remanding the action to this Court “for
9 further proceedings as may be required, including dismissal of the petition as
10 moot.” (ECF No. 51.) Order, *Valerio v. Frauenheim*, No. 19-56480, ECF No. 16
11 (9th Cir. Nov. 12, 2021).

12 On November 30, 2021, the Court issued an Order to Show Cause (“OSC”)
13 why the Petition should not be dismissed as moot in light of Petitioner’s death.
14 (Nov. 30, 2021 OSC, ECF No. 52.) In response to the OSC, on December 8, 2021,
15 Petitioner’s counsel and Respondent filed a Joint Stipulation requesting that the
16 case be dismissed. (Jt. Stip., ECF No. 54.)

18 **II. DISCUSSION**

19 In accordance with the Ninth Circuit’s remand instructions and at the request
20 of the parties, it is hereby **ORDERED** that the Petition is **DISMISSED** as moot
21 due to Petitioner’s death. *See Griffey v. Lindsey*, 349 F.3d 1157 (9th Cir. 2003)
22 (petition for writ of habeas corpus dismissed as moot after petitioner’s death); *see*
23 *also McMann v. Ross*, 396 U.S. 118 (1969) (per curiam) (same).

24 ///

25 ///

26 ///

27 ///

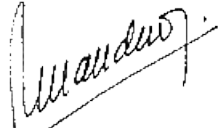
28 ///

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

III. CONCLUSION

IT THEREFORE IS ORDERED that the Petition is DISMISSED.

DATED: December 9, 2021



MARIA A. AUDERO
UNITED STATES MAGISTRATE JUDGE