



1           It appears that the Court lacks jurisdiction over the  
2 Petition because Petitioner was not "in custody" for the purposes  
3 of § 2254 at the time it was filed. "The federal habeas statute  
4 gives United States district courts jurisdiction to entertain  
5 petitions for habeas relief only from persons who are in custody  
6 in violation of the Constitution or laws or treaties of the  
7 United States." Maleng v. Cook, 490 U.S. 488, 490 (1989) (per  
8 curiam) (internal quotation marks omitted, emphasis in original);  
9 see also § 2254(a) ("[A] district court shall entertain an  
10 application for a writ of habeas corpus in behalf of a person in  
11 custody pursuant to the judgment of a State court only on the  
12 ground that he is in custody in violation of the Constitution or  
13 laws or treaties of the United States."). The "in custody"  
14 requirement is jurisdictional, and it requires that the  
15 petitioner be in custody at the time the petition is filed.  
16 Bailey v. Hill, 599 F.3d 976, 978-79 (9th Cir. 2010); see also  
17 Cook, 490 U.S. at 490-91 ("We have interpreted the statutory  
18 language as requiring that the habeas petitioner be 'in custody'  
19 under the conviction or sentence under attack at the time his  
20 petition is filed.").

21           Here, it appears that Petitioner was no longer in jail or on  
22 probation or parole on February 24, 2015, when his Petition was  
23 filed. (See Pet. at 1 (listing Petitioner's residential address  
24 in heading of Petition and not place of confinement), 2 (stating  
25 that Petitioner received sentence of "5 yrs. time served" in  
26 Sept. 2013), 19-20 (superior-court order denying habeas petition

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28 7, 2014.

1 and noting that Petitioner pleaded guilty in September 2013 and  
2 was "ordered released forthwith and not placed on parole"); see  
3 Woodall v. Beauchamp, 450 F. App'x 655, 657 (9th Cir. 2011)  
4 (finding that petitioner "was not in custody for purposes of the  
5 conviction he is challenging as he received credit for time  
6 served in excess of the 2-year sentence he received as a result  
7 of" that conviction).<sup>3</sup> Moreover, the fact that Petitioner  
8 continues to be subject to California's sex-offender-registration  
9 requirement is "merely a collateral consequence of conviction  
10 that is not itself sufficient to render [him] 'in custody' for  
11 the purposes of a habeas attack upon it." Henry v. Lungren, 164  
12 F.3d 1240, 1242 (9th Cir. 1999); see also Williamson v. Gregoire,  
13 151 F.3d 1180, 1184 (9th Cir. 1998) (holding that Washington sex-  
14 offender law does not place petitioner "in custody" for purposes  
15 of federal habeas corpus). Because Petitioner is not "in  
16 custody" under the state-court decision he challenges, the Court  
17 lacks jurisdiction to consider the Petition and it must be  
18 dismissed. See O'Neal v. Sherman, No. EDCV 14-2004-DDP MAN, 2014  
19 WL 5810308, at \*3 (C.D. Cal. Nov. 6, 2014) (dismissing petition  
20 with prejudice when petitioner was not "in custody" under  
21 challenged state-court decision).

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28 <sup>3</sup> Thus, Petitioner also was not in custody when he filed his  
first federal petition, on September 17, 2014.

1 IT THEREFORE IS ORDERED that within 21 days of the date of  
2 this Order, Petitioner show cause in writing, if he has any, why  
3 the Court should not deny the Petition and dismiss this action  
4 because he was not in custody at the time it was filed.  
5 Petitioner is warned that his failure to timely and  
6 satisfactorily respond to this Order may result in his Petition  
7 being dismissed for the reasons stated above and for failure to  
8 prosecute.

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11 DATED: February 27, 2015

  
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JEAN ROSENBLUTH  
U.S. MAGISTRATE JUDGE