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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERTO MACIAS,
Petitioner,
v.
MICHAEL MARTEL, Warden,
Respondent.

NO. SACV 10-874-PSG (AGR)

ORDER DISMISSING CASE

On June 17, 2010, Petitioner filed a petition for writ of habeas corpus. On May 23, 2013, the magistrate judge filed a Report recommending that the petition be denied and the action dismissed with prejudice. (Dkt. No. 18.) Objections were due on June 17, 2013. (Dkt. No. 19.)

In 2008, Petitioner was convicted of possession of drugs for sale and sentenced to 25 years to life pursuant to California's Three Strikes law. (Report at 2.)


On June 27, 2013, Petitioner filed a request to dismiss the petition because it is moot. Petitioner states that his sentence was "re-called under Prop. 36" and that he was resentenced to a determinate sentence of 14 years, 4 months.

1 The magistrate judge construed Plaintiff's request as a motion to dismiss
2 pursuant to Fed. R. Civ. P. 41. (Dkt. No. 21.) Rule 41(a)(1) permits a plaintiff to
3 voluntarily dismiss an action without a court order if he files a notice before an
4 answer or he obtains a stipulation from all parties. Otherwise, pursuant to
5 subdivision (a)(2), "an action may be dismissed at the plaintiff's request only by
6 court order, on terms that the court considers proper." The magistrate judge
7 ordered Petitioner to file a Notice whether he was seeking dismissal with or
8 without prejudice. (Dkt. No. 21.)

9 On July 29, 2013, Petitioner filed a Notice "request[ing] . . . the court to
10 dismiss the action with prejudice."

11 IT IS HEREBY ORDERED that the action is DISMISSED with prejudice
12 pursuant to Rule 41.

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15 DATED: August 6, 2013



PHILIP S. GUTIERREZ
United States District Judge