

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
8

9 DAVID W. JACOBSON,) 1:06-cv-00702-LJO-TAG HC
10)
11 Petitioner,) FINDINGS AND RECOMMENDATIONS
12) TO GRANT RESPONDENT'S MOTION
13 v.) TO DISMISS PETITION FOR WRIT OF
14 CALIFORNIA DEPARTMENT OF) HABEAS CORPUS AS MOOT
15 CORRECTIONS,) (Doc. 17)
16)
17 Respondent.) ORDER TO FILE OBJECTIONS WITHIN
18) FIFTEEN DAYS
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

16 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
17 pursuant to 28 U.S.C. § 2254.

18 Petitioner filed his petition on June 6, 2006, claiming that his constitutional rights were
19 violated by the imposition of an unlawful condition of parole, i.e., warrantless searches, and also
20 seeking relief from the results of a disciplinary hearing about which Petitioner provided no
21 information. (Doc. 1). On May 2, 2008, Respondent filed the instant motion to dismiss,
22 contending that because Petitioner had discharged the underlying sentence for which he was on
23 parole, the issues raised in the petition were moot. (Doc. 17). Petitioner did not file a response
24 to the motion.

25 **DISCUSSION**

26 The case or controversy requirement of Article III of the Federal Constitution deprives the
27 Court of jurisdiction to hear moot cases. Iron Arrow Honor Soc'y v. Heckler, 464 U.S. 67, 70,
28

1 104 S. Ct. 373 (1983); N.A.A.C.P., Western Region v. City of Richmond, 743 F.2d 1346, 1352
2 (9th Cir. 1984). A case becomes moot if the “the issues presented are no longer ‘live’ or the
3 parties lack a legally cognizable interest in the outcome.” Murphy v. Hunt, 455 U.S. 478, 481,
4 102 S. Ct. 1181 (1984). The Court has no power to decide cases that do not affect the rights of
5 litigants in the case before them. Defunis v. Odegaard, 416 U.S. 312, 316, 94 S. Ct. 1704 (1974);
6 Mitchell v. Dupnik, 75 F.3d 517, 527-528 (9th Cir. 1996). “To satisfy the Article III case or
7 controversy requirement, a litigant must have suffered some actual injury that can be redressed
8 by a favorable judicial decision.” Iron Arrow, 464 U.S. at 70; Simon v. Eastern Ky. Welfare
9 Rights Org., 426 U.S. 26, 38, 96 S. Ct. 1917 (1976); N.A.A.C.P., Western Region, 743 F.2d at
10 1353.

11 Along with the motion to dismiss, Respondent submitted documentation establishing that,
12 as of November 3, 2006, Petitioner had discharged the underlying sentence upon which the
13 parole and parole conditions about which the instant petition complains. (Doc. 17, Exhs. 12, 13).
14 Although Petitioner was to be convicted of yet another offense and re-incarcerated and then re-
15 paroled, those events are not the subject of the instant petition or motion to dismiss.
16 Nevertheless, the Court will address them to provide a background for its analysis.

17 A. Background

18 1. Petitioner’s underlying conviction and sentence

19 The documents submitted by Respondent establish that on October 10, 2001 , Petitioner
20 was convicted of second degree burglary¹ with four prior prison term enhancements² in People v.
21 David William Jacobsen, Kern County Superior Court case number BF095875. (Doc. 17, Exhs.
22 12, 13). Petitioner was sentenced to serve an aggregate term of seven years. (Doc. 17, Exh. 13).
23 On September 20, 2005, Petitioner was released on parole from that sentence. (Doc. 17, Exhs. 1-
24 3). Petitioner’s claims in the instant petition arise out of his parole from the burglary sentence
25 and the conditions of that parole.

26 ///

27 ¹California Penal Code § 460(b).

28 ²California Penal Code § 667.5(b).

1 2. Petitioner's parole revocations and eventual discharge from parole

2 The documents submitted by Respondent also establish that (a) on September 29, 2005,
3 Petitioner was arrested for use of cocaine, terrorist threats, resisting arrest, possession of drug
4 paraphernalia, and possession of cocaine, and placed on a parole hold, (b) on October 31, 2005,
5 Petitioner's parole was revoked and he was sentenced to serve a ten-month revocation term,
6 (c) after being re-released on parole on May 1, 2006, one week later Petitioner was arrested for
7 receiving stolen property and placed on a parole hold, and (d) on June 1, 2006, Petitioner's parole
8 was revoked and he was sentenced to serve a nine-month revocation term. (Doc. 17, Exhs. 1, 6,
9 7, 10, 11). The documents also establish that on November 3, 2006, Petitioner was discharged
10 from parole in case number BF095875. (Doc. 17, Exhs. 12, 13).

11 3. Petitioner's new conviction

12 The documents submitted by Respondent also establish that on March 22, 2006,
13 Petitioner was convicted of possession of a controlled substance³ and a prior prison term
14 enhancement⁴ in a new case entitled People v. David Williams Jacobsen, Kern County Superior
15 Court case number BF111940A, and was sentenced in that case on January 4, 2007 to serve a
16 term of three years. (Doc. 17, Exhs. 2, 8, 9). The conviction in case number BF111940A was
17 related to one of the probation violations found to be true on October 31, 2005, i.e., possession
18 of cocaine. On August 8, 2007, Petitioner was released on parole for the most recent conviction.
19 (Doc. 17, Exh. 2).

20 B. Petitioner's claims are moot

21 To the extent that the instant petition challenges an unspecified disciplinary hearing that
22 occurred while Petitioner was incarcerated on the original sentence that has been discharged, the
23 claim is moot. Nonnette v. Small, 316 F. 3d 872, 875-876 (9th Cir. 2002)(habeas claim based on
24 prison disciplinary hearing resulting in credit loss and administrative segregation is moot once
25 the petitioner served the underlying sentence and is paroled). Under Nonnette, any claim
26 Petitioner may have had regarding some prior disciplinary hearing became moot when he was

27 ³California Health & Safety Code § 11350(a).
28 ⁴California Penal Code § 667.5(b)

1 paroled from the original offense on September 20, 2005. (Doc. 17, Exhs. 1-3). The fact that
2 Petitioner, once paroled, would violate parole, have that parole revoked, and be re-incarcerated,
3 is irrelevant to the question of whether the disciplinary hearing claim is now moot. See
4 Nonnette, 316 F.3d at 875-876.

5 To the extent that Petitioner challenges the purportedly unconstitutional conditions of
6 parole, i.e., warrantless searches, this claim is also moot, Petitioner having served his underlying
7 sentence and having been discharged from parole arising from that sentence. Here, because the
8 original sentence has been discharged, the Court has no power to affect that sentence, its
9 execution, or Petitioner's rights vis-a-vis any parole arising from that sentence. In sum, the
10 Court cannot provide Petitioner any relief on claims arising out of the execution of his original
11 sentence because it has been discharged. See Defunis, 416 U.S. at 316; Mitchell, 75 F.3d at
12 527-528). Accordingly, the action is moot and should be dismissed. Murphy, 455 U.S. at 481;
13 Iron Arrow, 464 U.S. at 70.

14 Although Petitioner was later convicted on a new charge, sentenced, and subsequently
15 paroled with the same parole condition regarding warrantless searches, those facts cannot be
16 deemed to be included within the claims raised in the instant petition. Petitioner was not
17 sentenced on the new offense until January 4, 2007, six months after the instant petition was
18 filed. Therefore, any complaint Petitioner had about the conditions of parole that was eventually
19 granted on August 8, 2007, could not have been involved in the claims already filed in the instant
20 petition. If Petitioner wishes to contest the parole conditions arising from his subsequent
21 conviction, sentence, and parole, he must file a new petition raising those claims.⁵

22 RECOMMENDATIONS

23 Accordingly, the Court HEREBY RECOMMENDS that:

- 24 1. Respondent's motion to dismiss (Doc. 17), be GRANTED; and
25 2. The petition for writ of habeas corpus (Doc. 1) be DISMISSED.

26 ///

27
28 ⁵Respondent also contends that the petition should be dismissed because it names an improper respondent,
thus depriving the Court of jurisdiction over the case. (Doc. 17, p. 2). Because the claims in the petition must be
dismissed as moot, it is unnecessary for the Court to address this additional ground for dismissal.

1 These findings and recommendations are submitted to the United States District Judge
2 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 72-304 of
3 the Local Rules of Practice for the United States District Court, Eastern District of California.
4 Within fifteen (15) days after being served with a copy, any party may file written objections
5 with the Court and serve a copy on all parties. Such a document should be captioned “Objections
6 to Magistrate Judge’s Findings and Recommendations.” Replies to the objections shall be served
7 and filed within ten (10) court days (plus three days if served by mail) after service of the
8 objections. The District Judge will then review the Magistrate Judge’s ruling pursuant to
9 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the
10 specified time may waive the right to appeal the District Judge’s order. Martinez v. Ylst, 951
11 F.2d 1153 (9th Cir. 1991).

12
13 IT IS SO ORDERED.

14 Dated: January 8, 2009
15 _____

/s/ Theresa A. Goldner
UNITED STATES MAGISTRATE JUDGE