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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROCKY STEWART WIEBE,	)	1:08-cv-01364-JMD-HC
	)	
Petitioner,	)	ORDER TO SHOW CAUSE WHY PETITION
	)	SHOULD NOT BE DISMISSED AS MOOT
v.	)	
	)	
SUGRUE,	)	
	)	
Respondent.	)	RESPONSE DUE WITHIN THIRTY DAYS

Petitioner is a federal prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner filed the instant petition for writ of habeas corpus on September 3, 2008. (Doc. 1). Respondent filed an answer to the petition on March 24, 2009. (Doc. 21). Petitioner filed a traverse on April 15, 2009. (Doc. 23).

The Court must consider Article III jurisdiction *sua sponte* and dismiss if jurisdiction is lacking. *Southern Pacific Transportation Co. v. City of Los Angeles*, 922 F.2d 498, 502 (9th Cir. 1990), *cert. denied*, 112 S. Ct. 382 (1991); *see also* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”). Mootness is jurisdictional. *See Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1098 (9th Cir. 2000). A habeas petition is moot where a petitioner’s claim for relief cannot be redressed by a favorable decision of the court issuing a writ of habeas corpus. *Burnett v. Lampert*, 432 F.3d 996, 1000-01 (9th Cir. 2005) (quoting *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). Without a live “case or controversy,” this Court lacks jurisdiction over this matter.

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Petitioner's traverse indicates that Petitioner was scheduled to be released on December 1, 2009. (Traverse, Ex. 4). As this action may be moot, the Court will not proceed to the merits of the case until it has received briefing from the parties on the mootness issue.

**Order**

The parties are HEREBY ORDERED to file a memorandum of legal points and authorities either in support of, or in opposition to, dismissal of the petition on the grounds of mootness within THIRTY DAYS of the date of this order.

IT IS SO ORDERED.

**Dated: December 18, 2009                      /s/ John M. Dixon**  
**UNITED STATES MAGISTRATE JUDGE**