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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES FORDJOUR,)	1:09-cv-00060-OWW-SKO-HC
)	
Petitioner,)	ORDER CONSTRUING THE PETITION AS
)	ONE PURSUANT TO 28 U.S.C. § 2241
)	
v.)	ORDER TO PETITIONER TO SHOW CAUSE
)	WITHIN THIRTY DAYS OF SERVICE OF
KINGS COUNTY SHERIFF CHRIS)	THIS ORDER WHY THE PETITION
JORDAN, et al.,)	SHOULD NOT BE DISMISSED AS MOOT
)	(Docs. 1, 10, 21)
Respondents.)	
)	
)	

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus ostensibly pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303. Pending before the Court is the petition, which was filed on January 12, 2009.

I. Background

On June 8, 2009, the Magistrate Judge issued findings and recommendations to deny Petitioner's motions for release and for injunctive relief. (Doc. 10.) In the same document, the

1 Magistrate Judge also recommended dismissal of the petition
2 because Petitioner, who complained of his pretrial detention with
3 respect to state criminal charges, purported to proceed pursuant
4 to 28 U.S.C. § 2254, which authorizes habeas relief for persons
5 in custody pursuant to the judgment of a state court; however,
6 due to the pretrial stage of the state court proceedings, there
7 was no state court judgment to which the custody referred.

8 The Court adopted the findings and recommendations, and the
9 action was dismissed. Petitioner appealed the judgment. By
10 order filed on December 10, 2009, the judgment of dismissal was
11 summarily vacated, and the case was remanded to allow the Court
12 to consider Petitioner's previously filed objections to the
13 findings and recommendations and to enter a new order. On April
14 1, 2010, the Magistrate Judge vacated the findings and
15 recommendations. (Doc. 21.)¹ On April 14, 2010, the action was
16 assigned to the undersigned Magistrate Judge.

17 II. Consideration of the Petition as a Proceeding Pursuant
18 to 28 U.S.C. § 2241

19 The Court has reviewed the previously vacated findings and
20 recommendations as well as the objections filed by Petitioner on
21 July 13, 2009, which the appellate court concluded had not been
22 previously reviewed by the Court. In the objections, Petitioner
23 stated that he was not challenging his detention by the
24 Immigration and Naturalization Service (INS), as had been the
25 case in previous petitions; rather, he was challenging his
26 pretrial detention pursuant to state court processes. (Objs. 2-

27 ¹By separate order, the Court has set forth findings and recommendations
28 concerning Petitioner's motions for release.

1 3.)

2 In the petition, Petitioner challenges his detention on
3 criminal charges pending in the Kings County Superior Court
4 involving battery and attempted battery by an inmate on a non-
5 inmate (Cal. Pen. Code § 4501) and obstruction or resisting an
6 officer (Cal. Pen. Code § 69). (Pet. 1.) Petitioner argues that
7 he was an indigent, pretrial detainee, actually innocent of the
8 charges, who was otherwise eligible for pretrial release but was
9 unable to post bail, which was set too high. (Pet. 4-6, 11, 14.)
10 Petitioner alleges that he was served with the information or
11 complaint on December 13, 2007, and he thereafter awaited trial,
12 which was set for early February 2009. The gravamen of his
13 complaint is that because state statutes were not complied with
14 after his arrest, Petitioner was entitled to release on his own
15 recognizance, or to a reasonable bail, and his liberty interest
16 in bail was arbitrarily denied or infringed. (Pet. 1, 5, 7-9.)
17 Petitioner argues that the failure to release him was arbitrary
18 and vindictive, and he seeks immediate release in order to
19 prepare a defense for trial and to support his family. (Pet. 7-
20 8, 18.)

21 It appears from the petition and from the objections
22 submitted by Petitioner in connection with the Court's vacated
23 findings and recommendation that Petitioner is seeking release on
24 the ground that his pretrial detention pursuant to state court
25 process was unauthorized and unconstitutional.

26 Although the petition challenges pretrial detention at the
27 hands of state authorities, the Petitioner was a pretrial
28 detainee at the time the petition was filed. Thus, Petitioner

1 was not in custody "pursuant to the judgment of a State court" at
2 the time the petition was filed as provided for by 28 U.S.C. §
3 2254(a) and(b) (1). In such circumstances, it is appropriate for
4 the petition to proceed pursuant to 28 U.S.C. § 2241. 28 U.S.C.
5 §§ 2254, 2241; Stow v. Murashige, 389 F.3d 880, 885 (9th Cir.
6 2004). A state pretrial detainee may raise a claim concerning
7 the constitutionality of pretrial delay pursuant to 28 U.S.C. §
8 2241 because he is not in custody pursuant to the judgment of a
9 state court within the meaning of § 2254. McNeely v. Blanas, 336
10 F.3d 822, 824 n. 1 (9th Cir. 2003) (pretrial delay concerning
11 right to speedy trial).

12 Accordingly, the Court considers the petition pursuant to
13 the authority of 28 U.S.C. § 2241.

14 III. Mootness of the Claim Concerning Pretrial Detention

15 A claim concerning an arbitrary denial or revocation of bail
16 may be raised in a proceeding for habeas relief. Atkins v.
17 People of State of Michigan, 644 F.2d 543, 549-50 (6th Cir.
18 1981). However, it is established that a claim concerning the
19 constitutionality of pretrial detention procedures is moot after
20 conviction of the offense because after conviction, such a claim
21 refers to a "prior detention" and thus is moot. Barker v.
22 Estelle, 913 F.2d 1433, 1440 (9th Cir. 1990).

23 The Court may take judicial notice of court records. Fed.
24 R. Evid. 201(b); United States v. Bernal-Obeso, 989 F.2d 331, 333
25 (9th Cir. 1993); Valerio v. Boise Cascade Corp., 80 F.R.D. 626,
26 635 n. 1 (N.D. Cal. 1978), aff'd, 645 F.2d 699 (9th Cir. 1981).

27 The Court takes judicial notice of supplemental exhibits 11
28 through 14 in support of the petition for writ of habeas corpus

1 and emergency motion for appointment of counsel (doc. 5) filed on
2 May 15, 2009, in a case then pending in this district, Fordjour
3 v. Napolitano, no. CIV S-09-1800 JAM EFB P. The docket reflects
4 that these documents were filed by Petitioner in support of a
5 petition for writ of habeas corpus in which Petitioner challenged
6 his detention by the Immigration and Naturalization Service
7 (INS).

8 This Court has reviewed pages 57 through 59 of document 5
9 from the docket of that case, comprising attachment D, which
10 appears to be a certified copy of an abstract of judgment and
11 prison commitment from the Kings County Superior Court, recording
12 Petitioner's conviction pursuant to a plea on February 20, 2009,
13 of a violation of Cal. Pen. Code § 69, obstructing and resisting
14 an executive officer, for which Petitioner was sentenced to a
15 term of sixteen months in prison. Id. at 58. The information
16 filed in the state court case and minute orders of the state
17 court proceedings relating to Petitioner's plea and sentencing
18 follow the abstract of judgment. Id. at 60-67.

19 It thus appears that because Petitioner has been convicted
20 of and sentenced with respect to an offense with which he was
21 charged during the allegedly unlawful pretrial detention,
22 Petitioner's claim concerning the detention is moot.

23 It is established that a petitioner in a habeas corpus
24 proceeding pursuant to 28 U.S.C. § 2254 must be in custody, and
25 the petitioner must present a case or controversy within the
26 meaning of Article III, § 2, such that the party maintains a
27 personal stake in the outcome of the lawsuit. Spencer v. Kemna,
28 523 U.S. 1, 7 (1998). Federal courts lack jurisdiction to decide

1 cases that are moot because the courts' constitutional authority
2 extends to only actual cases or controversies. Iron Arrow Honor
3 Society v. Heckler, 464 U.S. 67, 70-71 (1983). Article III
4 requires a case or controversy in which a litigant has a personal
5 stake in the outcome of the suit throughout all stages of federal
6 judicial proceedings and has suffered some actual injury that can
7 be redressed by a favorable judicial decision. Id. A petition
8 for writ of habeas corpus becomes moot when it no longer presents
9 a case or controversy under Article III, § 2 of the Constitution.
10 Wilson v. Terhune, 319 F.3d 477, 479 (9th Cir. 2003). A petition
11 for writ of habeas corpus is moot where a petitioner's claim for
12 relief cannot be redressed by a favorable decision of the court
13 issuing a writ of habeas corpus. Burnett v. Lampert, 432 F.3d
14 996, 1000-01 (9th Cir. 2005) (quoting Spencer v. Kemna, 523 U.S.
15 1, 7 (1998)). Mootness is jurisdictional. See, Cole v. Oroville
16 Union High School District, 228 F.3d 1092, 1098-99 (9th Cir.
17 2000). Thus, a moot petition must be dismissed because nothing
18 remains before the Court to be remedied. Spencer v. Kemna, 523
19 U.S. 1, 18 (1998).

20 IV. Order to Petitioner to Show Cause Why the Petition
21 Should Not Be Dismissed as Moot

22 Accordingly, it is ORDERED that within thirty (30) days of
23 the date of service of this order, Petitioner show cause why the
24 Court should not dismiss the petition for mootness. Petitioner
25 is informed that a failure to comply with this order may itself
26 be considered a basis for imposing sanctions against Petitioner

27 ///

28 ///

1 pursuant to Local Rule 110, and it will result in a
2 recommendation that the petition be dismissed.

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4 IT IS SO ORDERED.

5 **Dated: June 28, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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