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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRIAN VINCENT STRETCH,)	1:10-cv-00302-SMS-HC
)	
Petitioner,)	ORDER DISMISSING THE PETITION AS
)	MOOT (Doc. 1)
)	
v.)	ORDER DIRECTING THE CLERK TO
)	CLOSE THE ACTION
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
)	
)	
)	

Petitioner is a federal prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner has consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting consent in a signed writing filed by Petitioner on March 10, 2010 (doc. 3). Pending before the Court is the petition, which was filed on February 22, 2010.

I. Background

Petitioner challenges his detention without arraignment on criminal charges in a case filed in this Court, namely, United States v. Stretch et al., 1:09-cr-00388-LJO. Petitioner alleges that while in custody in Merced concerning an unrelated case,

1 Petitioner learned of the pending federal criminal case; a hold
2 was placed on him on October 19, 2009, and after his state case
3 was resolved in December 2009, he was not arraigned on the
4 federal charges. Petitioner seeks arraignment on his federal
5 charges and an opportunity to exercise his right to bail. (Pet.
6 3-4.)

7 The Court may take judicial notice of court records. Fed.
8 R. Evid. 201(b); United States v. Bernal-Obeso, 989 F.2d 331, 333
9 (9th Cir. 1993); Valerio v. Boise Cascade Corp., 80 F.R.D. 626,
10 635 n.1 (N.D. Cal. 1978), aff'd, 645 F.2d 699 (9th Cir. 1981).

11 The Court notes its docket in United States v. Stretch et
12 al., 1:09-cr-00388-LJO, which reflects that Petitioner entered
13 into a plea agreement filed on September 30, 2010, pursuant to
14 which he pled guilty to count one of the indictment, conspiracy
15 to defraud the government with respect to claims, in violation of
16 18 U.S.C. § 286; and to count twelve of the indictment, mail
17 fraud, in violation of 18 U.S.C. §§ 1341, 2. (Doc. 43, 3.) The
18 docket further reflects that on December 23, 2010, Petitioner was
19 sentenced to concurrent terms of thirty-three (33) months on the
20 two counts. (Doc. 54.) A judgment of commitment was filed on
21 January 4, 2011. (Doc. 55.)

22 II. Screening the Complaint

23 The Rules Governing Section 2254 Cases in the United States
24 District Courts (Habeas Rules) are appropriately applied to
25 proceedings undertaken pursuant to 28 U.S.C. § 2241. Habeas Rule
26 1(b). Habeas Rule 4 requires the Court to make a preliminary
27 review of each petition for writ of habeas corpus. The Court
28 must summarily dismiss a petition "[i]f it plainly appears from

1 the petition and any attached exhibits that the petitioner is not
2 entitled to relief in the district court....” Habeas Rule 4;
3 O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990); see also
4 Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Habeas Rule
5 2(c) requires that a petition 1) specify all grounds of relief
6 available to the Petitioner; 2) state the facts supporting each
7 ground; and 3) state the relief requested. Notice pleading is
8 not sufficient; rather, the petition must state facts that point
9 to a real possibility of constitutional error. Rule 4, Advisory
10 Committee Notes, 1976 Adoption; O’Bremski v. Maass, 915 F.2d at
11 420 (quoting Blackledge v. Allison, 431 U.S. 63, 75 n. 7 (1977)).
12 Allegations in a petition that are vague, conclusory, or palpably
13 incredible are subject to summary dismissal. Hendricks v.
14 Vasquez, 908 F.2d 490, 491 (9th Cir. 1990).

15 Further, the Court may dismiss a petition for writ of habeas
16 corpus either on its own motion under Habeas Rule 4, pursuant to
17 the respondent's motion to dismiss, or after an answer to the
18 petition has been filed. Advisory Committee Notes to Habeas Rule
19 8, 1976 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43
20 (9th Cir. 2001).

21 III. Mootness of the Petition

22 Federal courts lack jurisdiction to decide cases that are
23 moot because the courts’ constitutional authority extends to only
24 actual cases or controversies. Iron Arrow Honor Society v.
25 Heckler, 464 U.S. 67, 70-71 (1983). Article III requires a case
26 or controversy in which a litigant has a personal stake in the
27 outcome of the suit throughout all stages of federal judicial
28 proceedings and has suffered some actual injury that can be

1 redressed by a favorable judicial decision. Id. A petition for
2 writ of habeas corpus becomes moot when it no longer presents a
3 case or controversy under Article III, § 2 of the Constitution.
4 Wilson v. Terhune, 319 F.3d 477, 479 (9th Cir. 2003). A petition
5 for writ of habeas corpus is moot where a petitioner's claim for
6 relief cannot be redressed by a favorable decision of the court
7 issuing a writ of habeas corpus. Burnett v. Lampert, 432 F.3d
8 996, 1000-01 (9th Cir. 2005) (quoting Spencer v. Kemna, 523 U.S.
9 1, 7 (1998)). Mootness is jurisdictional. See, Cole v. Oroville
10 Union High School District, 228 F.3d 1092, 1098-99 (9th Cir.
11 2000). Thus, a moot petition must be dismissed because nothing
12 remains before the Court to be remedied. Spencer v. Kemna, 523
13 U.S. 1, 18 (1998).

14 The issue of whether or not a person was entitled to release
15 during trial proceedings is moot once the person has been
16 convicted of a criminal offense and sentenced to prison. United
17 States v. Halliburton, 870 F.2d 557, 562 (9th Cir. 1989).
18 Likewise, a claim concerning denial of constitutional rights as a
19 result of shackling a defendant during an appearance before a
20 Magistrate Judge is generally moot unless it is shown to be an
21 issue that is capable of repetition yet evading review, such as
22 where the constitutional violation is likely to be repeated but
23 would not last long enough to be reviewed before becoming moot,
24 or where the challenge is to an ongoing government policy.
25 United States v. Howard, 480 F.3d 1005, 1009-10 (9th Cir. 2007).
26 An issue is capable of repetition yet evading review where 1) the
27 duration of the challenged action is too short to be litigated
28 prior to cessation, and 2) there is a reasonable expectation that

1 the same parties will be subjected to the same offending conduct.
2 Demery v. Arpaio, 378 F.3d 1020, 1026-7 (9th Cir. 2004).

3 Here, the claim involves pretrial detention, which is by
4 nature temporary and thus too brief to permit the propriety of
5 the detention to be litigated through appeal prior to cessation
6 of the conduct. See, Gerstein v. Pugh, 420 U.S. 103, 111 n.11
7 (1975). However, there is no basis for any expectation that
8 Petitioner will again commit a criminal offense or be subject to
9 the same offending conduct. There is no evidence of a
10 governmental policy initially to engage in, or to continue to
11 engage in, the delay of which Petitioner complains. Petitioner's
12 issue is thus not capable of repetition and yet evading review.

13 Therefore, the Court concludes that Petitioner's claim
14 concerning his detention pending trial on the charges was mooted
15 by Petitioner's conviction and sentence on the charged offenses.

16 Accordingly, the petition must be dismissed.

17 IV. Disposition

18 Accordingly, it is ORDERED that:

19 1) The petition for writ of habeas corpus is DISMISSED as
20 moot; and

21 2) The Clerk is DIRECTED to close the case because this
22 order terminates it in its entirety.

23
24
25 IT IS SO ORDERED.

26 **Dated: January 13, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE