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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROHAN ST. AURBY LEMON,
Petitioner,
v.
MICHAEL L. BENOVA, Warden,
Respondent.

Case No. 1:13-cv-00481-AWI-SKO-HC
FINDINGS AND RECOMMENDATIONS TO
DISMISS THE PETITION FOR WRIT OF
HABEAS CORPUS (DOC. 1) AND DIRECT
THE CLERK TO CLOSE THE CASE
OBJECTIONS DEADLINE:
THIRTY (30) DAYS

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. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 through 304. Pending before the Court is the petition, which was filed on April 3, 2013. Respondent filed an answer on June 20, 2013, and Petitioner filed a traverse on July 3, 2013. Further, without objection, Respondent filed a reply and a supplement thereto on July 10 and 12, 2013. Petitioner has neither responded to Respondent's filings nor sought an extension of time to respond to them.

I. Background

Petitioner, an inmate of the Taft Correctional Institution

1 (TCI), challenges the loss of fifty-four days of good time credit
2 that Petitioner suffered as a result of prison disciplinary findings
3 he engaged in fighting on January 4, 2001, and sexual acts on
4 October 3, 2000. (Pet., doc. 1 at 7, 11-15.) Petitioner challenges
5 the loss of credit and seeks release. (Id. at 3.) He raises the
6 following claims in the petition: 1) because the disciplinary
7 hearing officer was not an employee of the Federal Bureau of Prisons
8 (BOP) and thus lacked the authority to conduct the disciplinary
9 hearing and make findings resulting in punishment, including
10 disallowance of good time credit, Petitioner suffered a violation of
11 his right to due process of law; 2) because the hearing officer was
12 not an employee of the BOP but rather was an employee of a private
13 entity with a financial interest in the disallowance of good time
14 credits, Petitioner's due process right to an independent and
15 impartial decision maker at the disciplinary hearing was violated.
16 (Id. at 3-7.)

17 Respondent seeks dismissal of the petition for mootness and for
18 Petitioner's failure to exhaust administrative remedies.

19 II. Mootness

20 Federal courts lack jurisdiction to decide cases that are moot
21 because the courts' constitutional authority extends to only actual
22 cases or controversies. Iron Arrow Honor Society v. Heckler, 464
23 U.S. 67, 70-71 (1983). Article III requires a case or controversy
24 in which a litigant has a personal stake in the outcome of the suit
25 throughout all stages of federal judicial proceedings and has
26 suffered some actual injury that can be redressed by a favorable
27 judicial decision. Id. A petition for writ of habeas corpus
28 becomes moot when it no longer presents a case or controversy under

1 Article III, § 2 of the Constitution. Wilson v. Terhune, 319 F.3d
2 477, 479 (9th Cir. 2003). The petition is moot where a petitioner's
3 claim for relief cannot be redressed by a favorable decision of the
4 court issuing a writ of habeas corpus. Burnett v. Lampert, 432 F.3d
5 996, 1000-01 (9th Cir. 2005) (quoting Spencer v. Kemna, 523 U.S. 1,
6 7 (1998)). Mootness is jurisdictional; a moot petition must be
7 dismissed because nothing remains before the Court to be remedied.
8 See, Cole v. Oroville Union High School District, 228 F.3d 1092,
9 1098-99 (9th Cir. 2000); Spencer v. Kemna, 523 U.S. 1, 18.

10 On July 3, 2013, Petitioner filed a notice of change of address
11 from TCI to what appears to be a private residence. (Doc. 19.)
12 Respondent confirms that Petitioner was released from TCI. (Doc.
13 20, 1.)

14 When, because of intervening events, a court cannot give any
15 effectual relief in favor of the petitioner, the proceeding should
16 be dismissed as moot. Calderon v. Moore, 518 U.S. 149, 150 (1996).
17 It appears that the only relief Petitioner sought was early release
18 from custody, and he has been released from custody. Petitioner has
19 not asserted any factual or legal basis that would preclude a
20 finding of mootness. Thus, the Court concludes that the matter is
21 moot because the Court may no longer grant any effective relief.
22 See, Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (habeas claim
23 was moot where a former inmate sought placement in a community
24 treatment center but was subsequently released on parole and no
25 longer sought such a transfer); Kittel v. Thomas, 620 F.3d 949 (9th
26 Cir. 2010) (dismissing as moot a petition seeking early release
27 where the petitioner was released and where there was no live,
28 justiciable question on which the parties disagreed).

1 Accordingly, it will be recommended that the petition be
2 dismissed as moot.

3 III. Recommendations

4 Based on the foregoing, it is RECOMMENDED that:

5 1) The petition for writ of habeas corpus be DISMISSED as moot;
6 and

7 2) The Clerk be DIRECTED to close the action.

8 These findings and recommendations are submitted to the United
9 States District Court Judge assigned to the case, pursuant to the
10 provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 304 of the Local
11 Rules of Practice for the United States District Court, Eastern
12 District of California. Within thirty (30) days after being served
13 with a copy, any party may file written objections with the Court
14 and serve a copy on all parties. Such a document should be
15 captioned "Objections to Magistrate Judge's Findings and
16 Recommendations." Replies to the objections shall be served and
17 filed within fourteen (14) days (plus three (3) days if served by
18 mail) after service of the objections. The Court will then review
19 the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b) (1) (C).
20 The parties are advised that failure to file objections within the
21 specified time may waive the right to appeal the District Court's
22 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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25 IT IS SO ORDERED.

26 Dated: October 28, 2013

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE