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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE ARANCIBIA,

 Petitioner,

 v.

MICHAEL L. BENOVA,

 Respondent.

Case No. 1:14-cv-00535-AWI-BAM-HC

FINDINGS AND RECOMMENDATIONS TO
GRANT RESPONDENT'S MOTION TO
DISMISS THE PETITION FOR WRIT OF
HABEAS CORPUS (DOC. 18), DISMISS
THE PETITION AS MOOT (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 Respondent's motion to dismiss the petition as moot, which was filed and served on August 22, 2014. Although the time for filing opposition has passed, no opposition has been filed.

I. Background

Petitioner, an inmate of the Taft Correctional Institution (TCI), challenges the disallowance of twenty-seven days of good conduct time credit that Petitioner suffered as a result of prison

1 disciplinary findings, initially made at TCI on or about March 7,
2 2014, that he engaged in prohibited conduct by possessing stolen
3 property (food) on or about February 6, 2014. (Pet., doc. 1 at 1-
4 12.) Petitioner seeks invalidation of the sanction. Petitioner
5 raises the following claims in the petition: 1) because the
6 disciplinary hearing officer (DHO) was not an employee of the
7 Federal Bureau of Prisons (BOP) and thus lacked the authority to
8 conduct the disciplinary hearing and make findings resulting in
9 punishment, including disallowance of good time credit, Petitioner
10 suffered a violation of his right to due process of law; and 2)
11 because the hearing officer was not an employee of the BOP but
12 rather was an employee of a private entity with a financial interest
13 in the disallowance of good time credits, Petitioner's due process
14 right to an independent and impartial decision maker at the
15 disciplinary hearing was violated. (Id. at 3.)

16 Respondent moves for dismissal of the petition for mootness
17 because the disciplinary charges were reheard via teleconference on
18 June 17, 2014, by a certified disciplinary hearing officer of the
19 BOP. At the rehearing, Petitioner admitted taking from the chow
20 hall food that had been given to him by others. The BOP DHO found
21 that Petitioner had committed the prohibited misconduct of
22 possessing unauthorized property, and Petitioner was assessed a
23 three-month loss of commissary privileges without any loss of good
24 conduct time credit. (Doc. 18-1 at 1-3, 13-15.)

25 II. Mootness

26 Federal courts lack jurisdiction to decide cases that are moot
27 because the courts' constitutional authority extends to only actual
28 cases or controversies. Iron Arrow Honor Society v. Heckler, 464

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

17 Here, documentation submitted by Respondent in support of the
18 motion to dismiss demonstrates that the claims initially alleged by
19 Petitioner are no longer in controversy. The charges were reheard
20 by an officer who had the very qualifications that Petitioner had
21 alleged were required by principles of due process of law and the
22 pertinent regulations. It is undisputed that the findings and
23 sanctions that constituted the object of Petitioner's challenges in
24 the petition have now been superseded by the findings and sanctions
25 of the certified BOP DHO.

26 When, because of intervening events, a court cannot give any
27 effectual relief in favor of the petitioner, the proceeding should
28 be dismissed as moot. Calderon v. Moore, 518 U.S. 149, 150 (1996).

1 In the present case, it appears that the only relief that Petitioner
2 sought was invalidation of the findings and associated sanctions.
3 It appears that the rehearing of the reported rules violation by an
4 indisputably qualified DHO has effectuated the relief sought by
5 Petitioner. Thus, it is no longer possible for this Court to issue
6 a decision redressing the injury.

7 To the extent that any claim concerning Petitioner's loss of
8 commissary privileges remains before the Court, the claim lacks any
9 relationship to the legality or duration of Petitioner's confinement
10 and thus would not lie within the core of habeas corpus
11 jurisdiction. A federal court may not entertain an action over
12 which it has no jurisdiction. Hernandez v. Campbell, 204 F.3d 861,
13 865 (9th Cir. 2000). Relief by way of a writ of habeas corpus
14 extends to a person in custody under the authority of the United
15 States if the petitioner can show that he is "in custody in
16 violation of the Constitution or laws or treaties of the United
17 States." 28 U.S.C. § 2241(c)(1) & (3). A habeas corpus action is
18 the proper mechanism for a prisoner to challenge the fact or
19 duration of his confinement. Preiser v. Rodriguez, 411 U.S. 475,
20 485 (1973); Tucker v. Carlson, 925 F.2d 330, 332 (9th Cir. 1990)
21 (holding in a Bivens¹ action that a claim that time spent serving a
22 state sentence should have been credited against a federal sentence
23 concerned the fact or duration of confinement and thus should have
24 been construed as a petition for writ of habeas corpus pursuant to §
25 28 U.S.C. § 2241, but that to the extent that the complaint sought
26 damages for civil rights violations, it should be construed as a

27 _____
28 ¹ The reference is to Bivens v. Six Unknown Named Agents of Federal Bureau of
Narcotics, 403 U.S. 388 (1971).

1 Bivens action); Crawford v. Bell, 599 F.2d 890, 891-892 (9th Cir.
2 1979) (upholding dismissal of a petition challenging conditions of
3 confinement and noting that the writ of habeas corpus has
4 traditionally been limited to attacks upon the legality or duration
5 of confinement); see, Greenhill v. Lappin, 376 Fed. Appx. 757,
6 757-58 (9th Cir. 2010) (unpublished) (holding that the appropriate
7 remedy for a federal prisoner's claim that relates to the conditions
8 of his confinement is a civil rights action under Bivens); but see
9 Bostic v. Carlson, 884 F.2d 1267, 1269 (9th Cir. 1989) (holding that
10 habeas corpus is available pursuant to § 2241 for claims concerning
11 denial of good time credits and subjection to greater restrictions
12 of liberty, such as disciplinary segregation, without due process of
13 law); Cardenas v. Adler, no. 1:09-cv-00831-AWI-JLT-HC, 2010 WL
14 2180378 (E.D.Cal., May 28, 2010) (holding that a petitioner's
15 challenge to the constitutionality of the sanction of disciplinary
16 segregation and his claim that the disciplinary proceedings were the
17 product of retaliation by prison staff were cognizable in a habeas
18 proceeding pursuant to § 2241).

19 Claims concerning various prison conditions that have been
20 brought pursuant to § 2241 have been dismissed in this district for
21 lack of subject matter jurisdiction with indications that an action
22 pursuant to Bivens is appropriate. See, e.g., Dyson v. Rios, no.
23 1:10-cv-00382-DLB(HC), 2010 WL 3516358, *3 (E.D.Cal. Sept. 2, 2010)
24 (a claim challenging placement in a special management housing unit
25 in connection with a disciplinary violation); Burnette v. Smith, no.
26 CIV S-08-2178 DAD P, 2009 WL 667199 at *1 (E.D.Cal. Mar. 13, 2009)
27 (a petition seeking a transfer and prevention of retaliation by
28 prison staff); Evans v. U.S. Penitentiary, no. 1:07-CV-01611 OWW GSA

1 HC, 2007 WL 4212339 at *1 (E.D.Cal. Nov. 27, 2007) (claims brought
2 pursuant to § 2241 regarding a transfer and inadequate medical
3 care).

4 Here, to the extent that any claim remains before the Court,
5 the claim concerns conditions of confinement that do not bear a
6 relationship to, or have any effect on, the legality or duration of
7 Petitioner's confinement. It has long been established that habeas
8 corpus should be used as a vehicle to determine the lawfulness of
9 custody and not as a writ of error. See Eagles v. U.S. ex rel.
10 Samuels, 329 U.S. 304, 311-12 (1946). Habeas corpus proceedings are
11 not an appropriate forum for claims regarding disciplinary
12 procedures if the effect of the procedures on the length of the
13 inmate's sentence is only speculative or incidental. Sisk v.
14 Branch, 974 F.2d 116, 117-118 (9th Cir. 1992). The Court concludes
15 that if any claims remain before the Court, the claims are not
16 within the core of habeas corpus jurisdiction pursuant to 28 U.S.C.
17 § 2241.

18 In summary, Petitioner has not asserted any factual or legal
19 basis that would preclude a finding of mootness. The Court thus
20 concludes that the matter is moot because the Court may no longer
21 grant any effective relief. See, Badea v. Cox, 931 F.2d 573, 574
22 (9th Cir. 1991) (holding that a habeas claim was moot where a former
23 inmate sought placement in a community treatment center but was
24 subsequently released on parole and no longer sought such a
25 transfer); Kittel v. Thomas, 620 F.3d 949 (9th Cir. 2010)
26 (dismissing as moot a petition seeking early release where the
27 petitioner was released and where there was no live, justiciable
28 question on which the parties disagreed).

1 Accordingly, it will be recommended that the Court grant the
2 motion to dismiss the petition as moot.

3 III. Recommendations

4 Accordingly, it is RECOMMENDED that:

- 5 1) Respondent's motion to dismiss the petition be GRANTED; and
6 2) The petition for writ of habeas corpus be DISMISSED as moot;
7 and 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).

23 IT IS SO ORDERED.

24 Dated: October 6, 2014

/s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE