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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
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10 ROWAN CROSBY BROOKS, JR.,

11 Petitioner,

12 v.

13 GARY SWARTHOUT, WARDEN,

14 Respondent.
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Case No. 1:14-CV-01095-LJO-SMS HC

ORDER DENYING MOTION TO SET ASIDE
DISMISSAL FOR LACK OF JURISDICTION

(Doc. 19)

16 Petitioner, a state prisoner proceeding *pro se* with a petition for writ of habeas corpus
17 pursuant to 20 U.S.C. § 2254, sought to set aside a restitution order as a violation of due process. On
18 February 3, 2005, the Court adopted the findings and recommendations of the Magistrate Judge and
19 dismissed the petition for lack of jurisdiction. Pursuant to F.R.Civ.P. 60(b)(4), Petitioner now moves
20 to set aside the order of dismissal as void. The Court denies the motion.
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22 Rule 60(b)(4) provides that "[o]n motion and just terms, the court may relieve a party
23 from a final judgment for the following reasons: . . . (4) the judgment is void." Petitioner's
24 argument that the judgment was void consists of his repeating his substantive argument that the
25 California courts erred in enforcing a restitution order against Petitioner. Because the Court
26 dismissed the case for lack of jurisdiction to address a challenge to a restitution order brought in a §
27 2254 petition, however, the Court never reached Plaintiff's substantive arguments. Other than baldly
28

1 stating that the Court has jurisdiction, Petitioner does not directly challenge the basis of the dismissal
2 of his petition.

3 As the findings and recommendations stated:

4 "The . . . district court shall entertain an application for a writ of habeas
5 corpus [o]n behalf of a person in custody pursuant to a judgment of a State court
6 only on the ground that he is in custody in violation of the Constitution or laws or
7 treaties of the United States." 28 U.S.C. § 2254(a). "Because the "in custody"
8 requirement is jurisdictional, "it is the first question we must consider."
9 *Williamson v. Gregoire*, 151 F.3d 1180, 1182 (9th Cir. 1998) (*citation omitted*).
10 To be in custody generally requires a restraint on liberty not experienced by the
11 public generally. *Id.* ***Collateral consequences of a conviction, such as a fine, loss of a license, or a restitution order, do not satisfy the in-custody***
12 ***requirement.*** *Bailey v. Hill*, 599 F.3d 976, 978-79 (9th Cir. 2010); *Williamson*,
13 151 F.3d at 1183. Imposition of a restitution order does not constitute "a
14 significant restraint on liberty." *Bailey*, 599 F.3d at 979. That a petitioner is in
15 physical custody when he files a petition challenging a restitution order is not
16 sufficient to confer jurisdiction.

17 Doc. 16 at 3 (*emphasis added*).

18 The Court understands Petitioner's substantive argument. It dismissed the petition
19 because it lacks jurisdiction to consider that argument in the context of a § 2254 habeas
20 petition. Lacking jurisdiction means that a federal district court cannot consider
21 Petitioner's substantive argument. Because the restitution order is not a restraint on
22 Petitioner's liberty, his recourse was to appeal that portion of the California Supreme
23 Court's order to the U.S. Supreme Court, not to present it in a petition for writ of habeas
24 corpus.

25 The Court hereby DENIES Petitioner's Rule 60 motion to set aside the judgment
26 of dismissal as void.

27 IT IS SO ORDERED.

28 Dated: May 13, 2015

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE