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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

VINH NGOC HA,

 Petitioner,

 v.

MICHAEL L. BENOVA,

 Respondent.

Case No. 1:14-cv-01120-LJO-BAM-HC

FINDINGS AND RECOMMENDATIONS TO
GRANT RESPONDENT'S MOTION TO
DISMISS THE PETITION FOR WRIT OF
HABEAS CORPUS (DOC. 13)

FINDINGS AND RECOMMENDATIONS TO
DISMISS THE PETITION FOR WRIT OF
HABEAS CORPUS 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 served and filed on October 21, 2014. Although the time for filing opposition has passed, no opposition or notice of non-opposition has been filed.

I. Background

Petitioner, an inmate of the Taft Correctional Institution

1 (TCI), challenges two separate sanctions of forfeiture of twenty-
2 seven (27) days of time credit that were imposed in two disciplinary
3 proceedings at TCI. It was found that Petitioner engaged in
4 telephone abuse on December 30, 2010, and that he engaged in
5 fighting on March 20, 2013. (Pet., doc. 1, 2-19.) Petitioner seeks
6 invalidation of the sanction. Petitioner raises the following
7 claims in the petition: 1) because the disciplinary hearing officer
8 (DHO) was not an employee of the Federal Bureau of Prisons (BOP) and
9 thus lacked the authority to conduct the disciplinary hearing and
10 make findings resulting in punishment, including disallowance of
11 good time credit, Petitioner suffered a violation of his right to
12 due process of law; and 2) because the hearing officer was not an
13 employee of the BOP but rather was an employee of a private entity
14 with a financial interest in the disallowance of good time credits,
15 Petitioner's due process right to an independent and impartial
16 decision maker at the disciplinary hearing was violated. (Id. at 3-
17 9.)

18 Respondent moves for dismissal of the petition for mootness
19 because the disciplinary charges were reheard via teleconference on
20 January 30, 2014, by a certified disciplinary hearing officer of the
21 BOP. At the rehearing the BOP DHO found that Petitioner had
22 committed the prohibited misconduct, and he assessed the same
23 disallowance of good conduct time credit (twenty-seven days for each
24 violation) with additional limitations on privileges. (Decl., doc.
25 13-1 at 3-4.)

26 II. Mootness

27 Federal courts lack jurisdiction to decide cases that are moot
28 because the courts' constitutional authority extends to only actual

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

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

27 When, because of intervening events, a court cannot give any
28 effectual relief in favor of the petitioner, the proceeding should

1 be dismissed as moot. Calderon v. Moore, 518 U.S. 149, 150 (1996).
2 In the present case, it appears that the only relief that Petitioner
3 sought was invalidation of the findings and associated sanctions.
4 It appears that the rehearing of the incident report by an
5 indisputably qualified DHO has effectuated the relief sought by
6 Petitioner. Thus, it is no longer possible for this Court to issue
7 a decision redressing the injury. Petitioner has not asserted any
8 factual or legal basis that would preclude a finding of mootness.

9 The Court thus concludes that the matter is moot because the
10 Court may no longer grant any effective relief. See Badea v. Cox,
11 931 F.2d 573, 574 (9th Cir. 1991) (holding that a habeas claim was
12 moot where a former inmate sought placement in a community treatment
13 center but was subsequently released on parole and no longer sought
14 such a transfer); Kittel v. Thomas, 620 F.3d 949 (9th Cir. 2010)
15 (dismissing as moot a petition seeking early release where the
16 petitioner was released and where there was no live, justiciable
17 question on which the parties disagreed).

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

20 III. Recommendations

21 Accordingly, it is RECOMMENDED that:

- 22 1) Respondent's motion to dismiss the petition as moot be
23 GRANTED; and
24 2) The petition for writ of habeas corpus be DISMISSED as moot;
25 and 3) The Clerk be DIRECTED to close the action.

26 These findings and recommendations are submitted to the United
27 States District Court Judge assigned to the case, pursuant to the
28 provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 304 of the Local

1 Rules of Practice for the United States District Court, Eastern
2 District of California. Within thirty (30) days after being served
3 with a copy, any party may file written objections with the Court
4 and serve a copy on all parties. Such a document should be
5 captioned "Objections to Magistrate Judge's Findings and
6 Recommendations." Replies to the objections shall be served and
7 filed within fourteen (14) days (plus three (3) days if served by
8 mail) after service of the objections. The Court will then review
9 the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b) (1) (C).
10 The parties are advised that failure to file objections within the
11 specified time may "waive their right to challenge the magistrate's
12 factual findings" on appeal. Wilkerson v. Wheeler, - F.3d -, -, no.
13 11-17911, 2014 WL 6435497, *3 (9th Cir. Nov. 18, 2014) (citing
14 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

15 IT IS SO ORDERED.

16 Dated: December 10, 2014

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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