

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DANIEL BRACAMONTES,  
  
                                Petitioner,  
  
                                v.  
  
MICHAEL L. BENOVA,  
  
                                Respondent.

Case No. 1:14-cv-01238-LJO-SKO-HC  
  
FINDINGS AND RECOMMENDATIONS TO  
GRANT RESPONENT'S MOTION TO DISMISS  
THE PETITION (DOC. 12), 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 filed on October 31, 2014. Although the thirty-day period for filing opposition has passed, no opposition to the motion has been filed.

I. Background

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

1 disciplinary findings that he engaged in prohibited conduct by  
2 possessing stolen property on or about November 20, 2013. (Pet.,  
3 doc. 1 at 9-10.) Petitioner challenges the finding and seeks  
4 invalidation of the sanction. Petitioner raises the following  
5 claims: 1) because the disciplinary hearing officer (DHO) was not  
6 an employee of the Federal Bureau of Prisons (BOP) and lacked the  
7 authority to conduct the disciplinary hearing and make findings  
8 resulting in punishment, including disallowance of good time credit,  
9 Petitioner suffered a violation of his right to due process of law;  
10 and 2) because the hearing officer was not an employee of the BOP  
11 but rather was an employee of a private entity with a financial  
12 interest in the disallowance of good time credits, Petitioner's due  
13 process right to an independent and impartial decision maker at the  
14 disciplinary hearing was violated. (Id. at 3-9.)

15 Respondent moves for dismissal of the petition for mootness  
16 because the disciplinary charges were reheard via teleconference on  
17 August 26, 2014, by a certified disciplinary hearing officer of the  
18 BOP, who found that Petitioner had committed the prohibited  
19 misconduct. The BOP DHO assessed the same disallowance of good  
20 conduct time credit (twenty-seven days). (Decl., doc. 12-1 at 1-3;  
21 doc. 12-1 at 13-16.)

## 22 II. Mootness

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

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

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

23 When, because of intervening events, a court cannot give any  
24 effectual relief in favor of the petitioner, the proceeding should  
25 be dismissed as moot. Calderon v. Moore, 518 U.S. 149, 150 (1996).  
26 Here, the only relief that Petitioner sought was invalidation of the  
27 findings and associated sanctions. The rehearing of the incident  
28 report by an indisputably qualified DHO has effectuated the relief

1 sought by Petitioner. Thus, this Court can no longer issue a  
2 decision redressing the injury.

3 Petitioner has not asserted any factual or legal basis that  
4 would preclude a finding of mootness. The matter is, therefore,  
5 moot because the Court may no longer grant any effective relief.  
6 See, Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (habeas claim  
7 was moot where a former inmate sought placement in a community  
8 treatment center but was subsequently released on parole and no  
9 longer sought such a transfer); Kittel v. Thomas, 620 F.3d 949 (9th  
10 Cir. 2010) (dismissing as moot a petition seeking early release  
11 where the petitioner was released and where there was no live,  
12 justiciable question on which the parties disagreed).

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

15 III. Recommendations

16 Based on the foregoing, it is RECOMMENDED that:

- 17 1) Respondent's motion to dismiss the petition as moot be  
18 GRANTED;  
19 2) The petition for writ of habeas corpus be DISMISSED as moot;  
20 and 3) The Clerk be DIRECTED to close the action.

21 These findings and recommendations are submitted to the United  
22 States District Court Judge assigned to the case, pursuant to the  
23 provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 304 of the Local  
24 Rules of Practice for the United States District Court, Eastern  
25 District of California. Within thirty (30) days after being served  
26 with a copy, any party may file written objections with the Court  
27 and serve a copy on all parties. Such a document should be  
28 captioned "Objections to Magistrate Judge's Findings and

1 Recommendations.” Replies to the objections shall be served and  
2 filed within fourteen (14) days (plus three (3) days if served by  
3 mail) after service of the objections. The Court will then review  
4 the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b) (1) (C).  
5 The parties are advised that failure to file objections within the  
6 specified time may result in the waiver of rights on appeal.

7 Wilkerson v. Wheeler, - F.3d -, -, no. 11-17911, 2014 WL 6435497, \*3  
8 (9th Cir. Nov. 18, 2014) (citing Baxter v. Sullivan, 923 F.2d 1391,  
9 1394 (9th Cir. 1991)).

10  
11  
12 IT IS SO ORDERED.

13 Dated: December 17, 2014

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE