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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 **KHINE NYAN TUN,**

11
12 Petitioner,

13 **v.**

14 **RAFAEL ZUNIGA,**

15
16 Respondent.

Case No. 1:14-cv-01810 MJS (HC)

**ORDER REGARDING RESPONDENT'S
MOTION TO DISMISS**

[Doc. 21]

17
18 Petitioner is a federal prisoner proceeding pro se and in forma pauperis with a
19 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The parties have
20 consented to Magistrate Judge jurisdiction under 28 U.S.C. § 636(c). (ECF Nos. 4, 8.)
21 Pending before the Court is Respondent's February 26, 2015 motion to dismiss the
22 petition as moot. (ECF No. 21.) Petitioner did not file a response to the motion.

23 **I. BACKGROUND**

24 Petitioner, a federal inmate, was formerly housed at Taft Correctional Institution
25 ("TCI"). He challenges the disallowance of twenty-seven (27) days of good conduct time
26 credit that he suffered as a result of a prison disciplinary finding made at TCI on or about
27 April 19, 2013. Petitioner was engaged in prohibited conduct, namely fighting with other
28 inmates. (Pet., Ex. 2.) Petitioner challenges the loss of time credits and seeks

1 invalidation of the sanctions. Petitioner claims that because the disciplinary hearing
2 officer (DHO) was not an employee of the Federal Bureau of Prisons (BOP) and thus
3 lacked the authority to conduct the disciplinary hearings and make findings resulting in
4 punishment, including disallowance of good time credit, Petitioner suffered a violation of
5 his right to due process of law. (Id. at 3.)

6 Respondent moves for dismissal of the petition as moot because the disciplinary
7 charges were reheard on July 24, 2014, by a certified disciplinary hearing officer of the
8 BOP. At the rehearing, the BOP DHO found that Petitioner had committed the prohibited
9 act of fighting. Petitioner was again sanctioned with a loss of twenty-seven (27) days of
10 good conduct time credits and two months of disciplinary segregation. (Carol Cole Decl.,
11 Attachs. 1-3, ECF No. 21-1.)

12 **II. MOOTNESS**

13 Federal courts lack jurisdiction to decide cases that are moot because the courts'
14 constitutional authority extends to only actual cases or controversies. Iron Arrow Honor
15 Society v. Heckler, 464 U.S. 67, 70-71, 104 S. Ct. 373, 78 L. Ed. 2d 58 (1983). Article III
16 requires a case or controversy in which a litigant has a personal stake in the outcome of
17 the suit throughout all stages of federal judicial proceedings and has suffered some
18 actual injury that can be redressed by a favorable judicial decision. Id. A petition for writ
19 of habeas corpus becomes moot when it no longer presents a case or controversy under
20 Article III, § 2 of the Constitution. Wilson v. Terhune, 319 F.3d 477, 479 (9th Cir. 2003).
21 A petition for writ of habeas corpus is moot where a petitioner's claim for relief cannot be
22 redressed by a favorable decision of the court issuing a writ of habeas corpus. Burnett v.
23 Lampert, 432 F.3d 996, 1000-01 (9th Cir. 2005) (quoting Spencer v. Kemna, 523 U.S. 1,
24 7, 118 S. Ct. 978, 140 L. Ed. 2d 43 (1998)). Mootness is jurisdictional. See, Cole v.
25 Oroville Union High School District, 228 F.3d 1092, 1098-99 (9th Cir. 2000). Thus, a
26 moot petition must be dismissed because nothing remains before the Court to be
27 remedied. Spencer v. Kemna, 523 U.S. 1, 18, 118 S. Ct. 978, 140 L. Ed. 2d 43.

28 Here, documentation submitted by Respondent in support of the motion to

1 dismiss demonstrates that the claim initially alleged by Petitioner is no longer in
2 controversy. The charge was reheard by an officer who had the precise qualifications
3 that Petitioner had alleged were required by principles of due process of law and the
4 pertinent regulations. It is undisputed that the findings and sanctions that constituted the
5 object of Petitioner's challenge in the petition have now been superseded by the findings
6 and sanctions of the certified BOP DHO.

7 When, because of intervening events, a court cannot give any effectual relief in
8 favor of the petitioner, the proceeding should be dismissed as moot. Calderon v. Moore,
9 518 U.S. 149, 150, 116 S. Ct. 2066, 135 L. Ed. 2d 453 (1996). In the present case, it
10 appears that the only relief that Petitioner sought was invalidation of the findings and
11 associated sanctions. It has been demonstrated that the rehearing of the incident report
12 by an indisputably qualified DHO has effectuated the relief sought by Petitioner. Thus, it
13 is no longer possible for this Court to issue a decision redressing the injury.

14 In summary, Petitioner has not asserted any factual or legal basis that would
15 preclude a finding of mootness. The Court thus concludes that the matter is moot
16 because the Court may no longer grant any effective relief. See, Badea v. Cox, 931 F.2d
17 573, 574 (9th Cir. 1991) (holding that a habeas claim was moot where a former inmate
18 sought placement in a community treatment center but was subsequently released on
19 parole and no longer sought such a transfer); Kittel v. Thomas, 620 F.3d 949 (9th Cir.
20 2010) (dismissing as moot a petition seeking early release where the petitioner was
21 released and where there was no live, justiciable question on which the parties
22 disagreed).

23 Accordingly, the motion to dismiss the petition as moot is granted.

24 **III. CERTIFICATE OF APPEALABILITY**

25 "The plain language of [28 U.S.C.] § 2253(c)(1) does not require a petitioner to
26 obtain a [certificate of appealability] in order to appeal the denial of a § 2241 petition."
27 Harrison v. Ollison, 519 F.3d 952, 958 (9th Cir. 2008). "Nor is there any other statutory
28 basis for imposing a [certificate of appealability] requirement on legitimate § 2241

1 petitions. Although state prisoners proceeding under § 2241 must obtain a [certificate of
2 appealability], see § 2253(c)(1)(A), there is no parallel requirement for federal prisoners."
3 Id.

4 Accordingly, because Petitioner is a federal prisoner bringing a legitimate § 2241
5 petition, a certificate of appealability is not required.

6 **IV. ORDER**

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1) Respondent's Motion to Dismiss be GRANTED;
9 2) The petition for writ of habeas corpus be DISMISSED as moot; and
10 3) The Clerk be DIRECTED to close the action.

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12 IT IS SO ORDERED.

13 Dated: April 7, 2015

14 /s/ Michael J. Seng
15 UNITED STATES MAGISTRATE JUDGE
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