

1 de novo review of the case. Having carefully reviewed the entire file, including petitioner’s
2 objections, the court holds the findings and recommendations to be supported by the record and
3 proper analysis.

4 The court will, however, address petitioner’s objections to the findings and
5 recommendations regarding the first ground of relief. The magistrate judge’s analysis correctly
6 concludes that, as a method of challenging the underlying fact of conviction, petitioner’s argument
7 is unavailing. Petitioner’s objections, however, specify that it is the length of sentence, not the fact
8 of conviction, that is in dispute. Specifically, petitioner acknowledges he was convicted of a felony
9 under California Penal Code section 182(a)(1). The question is whether the trial court was
10 permitted to sentence petitioner based on a sentencing range of 2, 3, or 5 years rather a sentencing
11 range of 16 months, 2 years, or 3 years. Based on this, petitioner’s argument invoking *Apprendi v.*
12 *New Jersey*, 530 U.S. 466 (2000) and its progeny may have merit. This court will not, however,
13 address that argument because it appears to be moot. When a petitioner challenges a sentence,
14 rather than the conviction itself, the petition becomes moot when the petitioner is released from
15 custody. *See Cox v. McCarthy*, 829 F.2d 800, 803 (9th Cir. 1987). Here, it appears that petitioner
16 was sentenced to five years of probation on September 16, 2016. That five-year probationary period
17 would, therefore, have expired, at the latest, on September 16, 2021.¹ While it is true that the
18 existence of collateral consequences may permit a court to retain jurisdiction over a properly filed
19 habeas corpus petition, *see Carafas v. LaVallee*, 391 U.S. 234, 237–39 (1968), “a criminal sentence
20 . . . carries no presumption of collateral consequences.” *Maciel v. Cate*, 731 F.3d 928, 931 (9th Cir.
21 2013). Here, petitioner does not allege any collateral consequences stemming from his sentence
22 that relief under 28 U.S.C. 2254 would remedy.

23 Having found that petitioner is not entitled to habeas relief, the court now turns to whether
24 a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no
25 absolute entitlement to appeal a district court’s denial of his petition, and an appeal is only
26 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C.

27 ¹ There is no indication in the record that petitioner’s probation was ever revoked, tolling the
28 probationary period.

1 § 2253. The court should issue a certificate of appealability if “reasonable jurists could debate
2 whether (or, for that matter, agree that) the petition should have been resolved in a different
3 manner or that the issues presented were ‘adequate to deserve encouragement to proceed
4 further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.
5 880, 893 & n.4 (1983)). In the present case, the court finds that reasonable jurists would not find
6 the court’s determination that the petition should be dismissed debatable or wrong, or that
7 petitioner should be allowed to proceed further. Therefore, the court declines to issue a certificate
8 of appealability.

9 Accordingly,

- 10 1. The findings and recommendations issued on January 13, 2022 (Doc. No. 19) are
11 adopted in full;
- 12 2. The petition for writ of habeas corpus (Doc. No. 1) is denied;
- 13 3. The court declines to issue a certificate of appealability; and
- 14 4. The Clerk of Court is directed to close the case.

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17 IT IS SO ORDERED.

18 Dated: September 14, 2022

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UNITED STATES DISTRICT JUDGE