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

DANNY ATTERBURY,

Petitioner,

No. CIV S-08-1466 LKK DAD P

vs.

ED FOULK,

Respondent.

FINDINGS & RECOMMENDATIONS

_____/

Petitioner is a former state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was committed to the California mental health system in 1989 for a term of fifteen years and four months following his plea of not guilty by reason of insanity on charges of attempted murder, with enhancements for the infliction of great bodily injury. The instant habeas petition challenges a 2007 jury determination in proceedings conducted pursuant to California Penal Code § 1026.5(b) that petitioner’s commitment should be extended for a period of two years. In his petition pending before the court petitioner claims that the attorney who represented him at the re-commitment proceedings rendered ineffective assistance of counsel, that his appellate attorney rendered ineffective assistance of counsel, and that the prosecutor at the re-commitment proceedings committed prejudicial misconduct.

1 On February 24, 2009, petitioner filed a notice of change of address in which he
2 informed the court that he had been released from his confinement at Napa State Hospital. By
3 order dated October 1, 2009, petitioner was ordered to show cause why this action should not be
4 dismissed as moot. Petitioner has not responded to that order.

5 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed as
6 moot.

7 These findings and recommendations will be submitted to the United States
8 District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
9 twenty-one days after being served with these findings and recommendations, any party may file
10 written objections with the court. The document should be captioned "Objections to Findings
11 and Recommendations." The parties are advised that failure to file objections within the
12 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
13 F.2d 1153 (9th Cir. 1991).

14 DATED: December 7, 2009.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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