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

ROBERT BERT RANDALL,

Petitioner,

No. 2: 10-cv-0580 GEB KJN P

vs.

RICK HILL,

Respondent.

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner is a former state prisoner proceeding without counsel in this habeas corpus action filed pursuant to 28 U.S.C. § 2254. By order filed March 31, 2011, this court noted that petitioner had been released on parole, and thus directed petitioner to show cause why this action should not be dismissed as moot. (Dkt. No. 22.) Petitioner was accorded thirty days within which to respond to the court’s order. More than thirty days have passed, and petitioner has not responded to the court’s order or otherwise communicated with the court.

“[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.” Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). A habeas petition is moot after a prisoner’s release if the petition presents no remaining case or controversy. Nonnette v. Small, 316 F.3d 872, 876-77 (9th Cir. 2002). This action therefore appears to be moot, and petitioner

1 has apparently abandoned it, thus warranting dismissal pursuant to Local Rule 110, and Federal
2 Rule of Civil Procedure 41(b).

3 Accordingly, IT IS HEREBY RECOMMENDED that petitioner’s application for
4 a writ of habeas corpus be dismissed.

5 These findings and recommendations are submitted to the United States District
6 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 21 days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 “Objections to Magistrate Judge’s Findings and Recommendations.” If petitioner files
10 objections, he shall also address whether a certificate of appealability should issue and, if so, why
11 and as to which issues. A certificate of appealability may issue under 28 U.S.C. § 2253 “only if
12 the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §
13 2253(c)(3). Any response to the objections shall be filed and served within 14 days after service
14 of the objections. The parties are advised that failure to file objections within the specified time
15 may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th
16 Cir. 1991).

17 DATED: May 9, 2011

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20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE

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