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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM DALBY,

 Petitioner,

 v.

RALPH DIAZ,

 Respondent.

No. 2:13-cv-1169 TLN KJN P

FINDINGS & RECOMMENDATIONS

BRIEF BACKGROUND AND RELEVANT INFORMATION

Petitioner is a state prisoner, proceeding without counsel, with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (See ECF No. 1.) Petitioner challenges his 2002 convictions for three counts of sodomy (Cal. Pen. Code, § 269(a)(3) [victim A]), eleven counts of rape (Cal. Pen. Code, § 269(a)(4) [victim C]), one count of oral copulation by force (Cal. Pen. Code, § 269(a)(4) [victim S]), one count of oral copulation (Cal. Pen. Code, § 288a(c)(1) [victim D]), continuous sexual abuse of victims A, C and S (Cal. Pen. Code, § 288.5(a)), and failure to appear (Cal. Pen. Code, 1320.5). (See LD 1.) Following a remand for resentencing after appeal to the California Court of Appeal, Third Appellate District (LD 2), ultimately, petitioner was again sentenced to a total of 240 years-to-life, plus a determinate term of six years and eight months in state prison. (LD 7.)

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1 As the court commenced to address petitioner’s claims presented in the habeas petition, it
2 had occasion to consult the California Department of Corrections and Rehabilitation’s website,
3 and in particular, its Inmate Locator function. Using petitioner’s inmate identification number
4 (reflected in his petition as T-63855) the court conducted a search; no results were found. Using
5 petitioner’s full name, a second search was conducted; again, no results were found. Given the
6 length of petitioner’s sentence, it is highly unlikely petitioner was released from custody, even in
7 light of the current pandemic. Because custody is required for an action of this type to proceed,
8 the court continued its research.

9 Using Westlaw, the court undertook a Public Records search of California state death
10 records, using petitioner’s full name, to wit: William Michael Dalby. The search results indicate
11 that a William Michael Dalby, with a birthdate in February 1948,¹ died on May 9, 2019, in
12 Vacaville, California, at the California Medical Facility. The source reflected on the Westlaw
13 search result is the “California Department of Public Health, Center for Health Statistics.”

14 DISCUSSION

15 In a state prisoner’s federal habeas action, the underlying “controversy” is whether the
16 petitioner is “in custody in violation of the Constitution or laws or treaties of the United States.”
17 Calderon v. Ashmus, 523 U.S. 740, 746 (1998). As this court has previously held:

18 Federal courts have jurisdiction to hear cases and controversies. U.S.
19 CONST. art. III, § 2. An actual controversy must exist between the
20 parties throughout all stages of the proceeding. Alvarez v. Smith, ___
21 U.S. ___, 130 S. Ct. 576, 580, 175 L.Ed.2d 447 (2009). An action
22 becomes moot when the issues “are no longer ‘live,’” i.e., when the
23 “parties lack a legally cognizable interest in the outcome.” Powell v.
24 McCormack, 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491
25 (1969). I[n] these habeas proceedings the relief sought, i.e.,
26 petitioner's immediate release from custody, is unique to the
27 petitioner himself and cannot be transferred. “In other words, the
28 claims [are] extinguished upon [a] petitioner's death and no party can
be substituted for him.” Pennewell v. Carey, No. 2:06–cv0598 JKS
EFB, 2008 WL 1860166, at *1 (E.D.Cal. Apr.23, 2008) (citing
Fed.R.Civ.P. 25(a)). “Because petitioner's death renders this case
moot, the petition for writ of habeas corpus should be dismissed as
moot.” Garceau v. Woodford, 399 F.3d 1101 (9th Cir.2005). See also
Dove v. United States, 423 U.S. 325, 96 S.Ct. 579, 46 L.Ed.2d 531

¹ The record lodged with this court on August 9, 2018, includes reference to petitioner’s birthdate of February 19, 1948. (See LD 11 at 305, 308.)

1 (1976) (dismissing a certiorari petition because petitioner had died);
2 Griffey v. Lindsey, 349 F.3d 1157 (9th Cir.2003) (dismissing a
3 petition for writ of habeas corpus as moot because petitioner had
4 died).

4 Germino v. Marshall, No. CIV S-08-3010, 2010 WL 5393907, at *1 (E.D. Cal. Dec. 21, 2010).

5 A petition for writ of habeas corpus is moot when the petitioner has died. See Lockhart v.

6 McCree, 476 U.S. 162, 168 n.2 (1986); McMann v. Richardson, 397 U.S. 759, 760 n.1 (1970).

7 Further, Rule 201 of the Federal Rules of Evidence permits a court to take judicial notice
8 of adjudicative facts:

9 (b) **Kinds of Facts that May be Judicial Noticed.** The court may
10 judicially notice a fact that is not subject to reasonable dispute
11 because it:

11 (1) is generally known within the trial court’s territorial jurisdiction;
12 or

12 (2) can be accurately and readily determined from the sources whose
13 accuracy cannot reasonably be questioned.

14 (c) **Taking Notice.** The court:

15 (1) may take judicial notice on its own; or

16 (2) may take judicial notice if a party requests it and the court is
17 supplied with the necessary information.

18 (d) **Timing.** The court may take judicial notice at any stage of the
19 proceeding.

19 Here then, the court is taking judicial notice on its own of the results from the Westlaw Public
20 Records, state death records database, search wherein petitioner William Michael Dalby is
21 reported to have died on May 9, 2019, at a CDCR facility, the source of which is the California
22 Department of Public Health - a source whose accuracy cannot be reasonably questioned. See,
23 e.g., United States v. Ritchie, 342 F.3d 903, 908-09 (9th Cir. 2003) (citing Fed. R. Evid. 201(b))
24 (“Courts may only take judicial notice of adjudicative facts that are not subject to reasonable
25 dispute” & “Facts are indisputable, and thus subject to judicial notice, only if they either
26 ‘generally known’ ...or capable of accurate and ready determination by resort to sources whose
27 accuracy cannot be questioned”); see also Matter of Grand Jury Investigation of Targets, 918
28 F.Supp. 1374, 1380 (S.D.Cal. 1996) (Court could take judicial notice of fact that United States

1 Attorney's Office for Southern District of California has in excess of 75 attorneys, for purposes of
2 claim that one Assistant United States Attorney's disqualification from investigation on ethical
3 conflict of interest grounds required preindictment disqualification of entire office; such
4 information was readily available on Westlaw and in West's Legal Directory); Boone v. Menifee,
5 387 F.Supp.2d 338, 343 (S.D.N.Y. 2005) (habeas court was entitled to take judicial notice of
6 information on "prisoner locator" websites, such as those maintained by the Bureau of Prisons
7 and the New York State Department of Correctional Services), adopted report and
8 recommendation 2005 WL 2234031 (Sept. 13, 2005); U.S. ex rel. Dingle v. BioPort Corp., 270
9 F.Supp.2d 968, 971 (W.D. Mich. 2003) (public records and government documents, including
10 those available from reliable sources on the Internet, are subject to judicial notice), affirmed, 388
11 F.3d 209, cert. den., 544 U.S. 949.

12 Accordingly, IT IS HEREBY RECOMMENDED that petitioner's application for a writ of
13 habeas corpus be denied as moot as a result of his death on May 9, 2019.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 "Objections to Magistrate Judge's Findings and Recommendations. Any response to the
19 objections shall be filed and served within fourteen days after service of the objections. The
20 parties are advised that failure to file objections within the specified time may waive the right to
21 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

22 Dated: September 10, 2020

23 
24 _____
25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE

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