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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHNATHAN ALLAN BAKER,
Petitioner,
v.
CLARK DUCART,
Respondent.

No. 2:17-cv-01812 KJM GGH P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner was a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 8, 2019, respondent filed a notice of petitioner’s death, including a declaration from Guadalupe Lopez the Litigation Coordinator at Salinas Valley State Prison where petitioner was housed. Fed. R. Civ. P. 25(1). This court “shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that *he is in custody* in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a) (emphasis added). A petitioner must be “in custody” under the conviction or sentence in which the petition attacks at the time the petition is filed. Maleng v. Cook, 490 U.S. 488, 490-91 (1989); Allen v. State of Oregon, 153 F.3d 1046, 1048 (9th Cir. 1998). Accordingly, the death of petitioner moots the instant petition because petitioner is no longer “in custody” and can no longer challenge his conviction. See Dove v. United States, 423 U.S. 325 (1976) (per curiam) (dismissing petition because petitioner had died).

1 Accordingly, IT IS HEREBY ORDERED that ECF No. 20 (order directing the filing of
2 documents electronically) is vacated;

3 Further, IT IS HEREBY RECOMMENDED that this action be dismissed as moot.

4 These findings and recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
6 after service of these findings and recommendations, any written objections may be filed with the
7 court. The document should be captioned “Objections to Magistrate Judge’s Findings and
8 Recommendations.” Any response to the objections shall be filed and served within fourteen
9 days after service of the objections. Failure to file objections within the specified time may waive
10 the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

11 Dated: January 9, 2019

12 /s/ Gregory G. Hollows
13 UNITED STATES MAGISTRATE JUDGE
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