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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 RAYMOND WRIGHT,
8 Petitioner,

9 v.

10 W. L. MUNIZ, Warden,
11 Respondent.

Case No. 16-cv-01038-HSG (PR)

**ORDER GRANTING MOTION TO
DISMISS; DENYING CERTIFICATE OF
APPEALABILITY**

Re: Dkt. No. 6

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13 On March 1, 2016, petitioner, a former state prisoner, filed a *pro se* habeas petition
14 challenging the California Department of Corrections and Rehabilitation's ("CDCR") calculation
15 of his release date. Petitioner was released from custody on May 11, 2015. Ex. 1.¹ Respondent
16 has filed a motion to dismiss on the ground that Petitioner was not in custody at the time the
17 petition was filed. Petitioner has not filed an opposition, and the time in which to do so has
18 passed.

19 **BACKGROUND**

20 According to the petition, in September 2011, Petitioner was convicted in Los Angeles
21 County Superior Court of possession of cocaine base for sale. Because this was his second strike
22 under California's Three Strikes Law, Petitioner received a sentence of six years, to be served at
23 80%.

24 The petition does not challenge the validity of Petitioner's conviction or sentence. Rather,
25 petitioner contends he was eligible for early release pursuant to an order issued on February 10,
26 2014 by the Three-Judge Court in *Coleman/Plata v. Brown*.

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28 ¹ Any references herein to exhibits are to the exhibits submitted by Respondent in support of the
motion to dismiss.

1 be enhanced by the allegedly invalid prior sentence. A petitioner is not deemed “in custody”
2 merely because of the possibility that future sentences for any subsequent crimes may be enhanced
3 by an allegedly invalid prior conviction or sentence. *Maleng*, 490 U.S. at 492. Nor has Petitioner
4 shown that he is subject to continuing court supervision based on his 2011 conviction and
5 sentence. Because Petitioner is no longer in custody on the 2011 conviction and sentence, he may
6 not attack it in a federal habeas proceeding, and the instant petition must be dismissed.

7 The petition must also be dismissed on the independent and alternative ground that it is
8 now moot. Article III, Section 2, of the Constitution requires the existence of a “case” or
9 “controversy” through all stages of federal judicial proceedings. This means that, throughout the
10 litigation, the plaintiff or petitioner “must have suffered, or be threatened with, an actual injury
11 traceable to the defendant and likely to be redressed by a favorable judicial decision.” *Lewis v.*
12 *Continental Bank Corp.*, 494 U.S. 472, 477 (1990). An inmate’s (or a parolee’s) challenge to the
13 validity of his conviction satisfies the case-or-controversy requirement, because the incarceration
14 (or the restrictions imposed by the terms of the parole) constitutes a concrete injury, caused by the
15 conviction and redressable by the invalidation of the conviction. *Spencer v. Kemna*, 523 U.S. 1, 7
16 (1998). Once the inmate’s sentence has expired, however, some concrete and continuing injury
17 other than the now-ended incarceration or parole—some “collateral consequence” of the
18 conviction—must exist if the suit is to be maintained and not considered moot. *Id.* The rationale
19 of *Spencer v. Kemna* also applies where a petitioner seeks to challenge his sentence rather than his
20 conviction. That is, a challenge to a prison sentence becomes moot once the sentence has been
21 served unless the petitioner continues to suffer collateral consequences. *See United States v.*
22 *Palomba*, 182 F.3d 1121, 1123 (9th Cir. 1999). Here, Petitioner has received the redress he seeks
23 by way of the instant petition—i.e., he has been released from custody—and there is no showing
24 of collateral consequences. Accordingly, the petition must be dismissed as moot.

25 **CONCLUSION**

26 For the foregoing reasons:

- 27 1. Respondent’s motion to dismiss the petition is GRANTED.
28 2. Petitioner has not shown “that jurists of reason would find it debatable whether the

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district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Accordingly, a certificate of appealability is DENIED.

3. The Clerk shall terminate all pending motions, enter judgment, and close the file.

IT IS SO ORDERED.

Dated: 1/12/2017


HAYWOOD S. GILLIAM, JR.
United States District Judge