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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNY M. BROWN,
Petitioner,

v.

DAVID BAUGHMAN,
Respondent.

Case No. [17-cv-01409-JCS](#) (PR)

**ORDER DENYING MOTION TO
REOPEN**

Petitioner’s motion to reopen¹ this federal habeas action (Dkt. No. 25) is DENIED because the Court lacks jurisdiction over the matter.

Through this habeas action, petitioner sought to void his 1993 state conviction for forcible oral copulation for which he had received a sentence of ten years. In the order of dismissal, the Court stated that it lacked jurisdiction over his petition because he was no longer in custody for the 1993 offense, 25 years having passed since the 10-year sentence was imposed. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (“The federal habeas corpus statute requires that the applicant must be ‘in custody’ when the application for habeas corpus is filed.”).

¹ This action was dismissed without prejudice and judgment entered in favor of respondent. Petitioner then filed a fourth amended petition (Dkt. No. 25), which the Court construes as containing a motion to reopen.

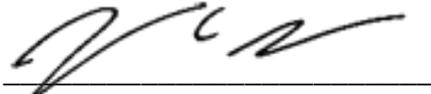
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In his motion to reopen, petitioner contends he is still in custody because the 1993 conviction was used to increase the sentence he is currently serving, which was imposed for another crime.

This is insufficient. Petitioner is not in custody for his 1993 conviction. Rather, petitioner is in custody for a later conviction, the sentence for which was increased because of the 1993 conviction. This is easily demonstrated. If his later conviction were voided, his sentence for that conviction, enhancements and all, would be voided as well. He could not be held on the 1993 conviction, the sentence for which expired over two decades ago.

IT IS SO ORDERED.

Dated: August 23, 2017



JOSEPH C. SPERO
Chief Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNY M. BROWN,
Plaintiff,
v.
DAVID BAUGHMAN,
Defendant.

Case No. [17-cv-01409-JCS](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 23, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kenny M. Brown ID: V22473
CMC-East Facility (Cell # 5134)
P.O. Box 8101
San Luis Obispo, CA 93409-8101

Dated: August 23, 2017

Susan Y. Soong
Clerk, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to the
Honorable JOSEPH C. SPERO