

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

ANTHONY R. OWENS,)	No. C 11-02933 EJD (PR)
)	
Petitioner,)	ORDER DENYING PETITION FOR
)	WRIT OF HABEAS CORPUS
vs.)	
)	
CALIFORNIA DEPARTMENT OF)	
CORRECTIONS,)	
)	
Respondent.)	
_____)	

Petitioner filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his state conviction. On October 26, 2011, the Court dismissed the petition with leave to amend for Petitioner to show that meets the “in custody” requirement. (See Docket No. 8.) Petitioner was directed to file an amended petition within thirty days. (Id.)

As discussed in the Court’s Order of Dismissal with Leave to Amend, Petitioner must show that he meets the “in custody” requirement of § 2254 before this Court may entertain his petition. The federal writ of habeas corpus is only available to persons “in custody” at the time the petition is filed. See 28 U.S.C. §§ 2241(c), 2254(a); Carafas v. LaVallee, 391 U.S. 234, 238 (1968). This requirement is jurisdictional. Id. A petitioner who files a habeas petition after he has fully served his sentence and who is not subject to court supervision is not “in custody” for the purposes of this court’s subject matter jurisdiction and his petition is

United States District Court
For the Northern District of California

1 therefore properly denied. See De Long v. Hennessey, 912 F.2d 1144, 1146 (9th Cir. 1990).

2 The Court found that dismissal appeared to be appropriate as the information in the
3 petition indicated that Petitioner was not “in custody”: Petitioner indicated “No” to the
4 question regarding custody in the form petition, (Pet. at 2), and his mailing address is a
5 private residence and not a state correctional facility, (id. at 1). However, the Court also
6 noted that this information was not consistent with the facts of his conviction, *i.e.*, he was
7 sentenced in June 2008 to 9 years in prison. (Pet. at 2.) Therefore in the interest of justice,
8 the Court dismissed the petition with leave to amend, for Petitioner to attempt to show that he
9 meets the “in custody” requirement.

10 On November 17, 2011, Petitioner filed a letter in which he states that “there’s
11 nothing at this time to ‘Amend’” and that he has “no disagreements” with the Court order.
12 (Docket No. 9.) He requests that the Court “send in future [*sic*] about anything that
13 concern[s] [his] case.” (Id.) It appears that Petitioner is conceding that he does not meet the
14 “in custody” requirement. Accordingly, this petition is DENIED.

15
16 **CONCLUSION**

17 For the foregoing reasons, the petition is DENIED for failure to meet the in custody
18 requirement. See 28 U.S.C. §§ 2241(c), 2254(a).

19
20 DATED: 12/30/2011



EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY RAY OWENS,
Petitioner,

Case Number: CV11-02933 EJD

CERTIFICATE OF SERVICE

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS,

Respondent.

_____/

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 1/9/2012, 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.

Anthony R Owens
405 Serrano Dr. #3E
San Francisco, CA 94132

Dated: 1/9/2012

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk