

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 WILLIAM FRED WOOTEN,
12 Petitioner,
13 v.
14 SCOTT KERNAN, et al.,
15 Respondents.

Case No.: 17-CV-94-AJB-WVG

**REPORT AND
RECOMMENDATION FOR ORDER
GRANTING RESPONDENTS'
MOTION TO DISMISS PETITION
FOR WRIT OF HABEAS CORPUS**

[ECF No. 8]

16
17
18 **I. INTRODUCTION**

19 William Fred Wooten (“Petitioner”) filed a *pro se* Petition for Writ of Habeas Corpus
20 (“Petition”) pursuant to 28 U.S.C. Section 2254 on January 17, 2017, which challenges his
21 2014 state conviction. (*See* ECF No. 1.) Now before the Court is Respondents’ Scott
22 Kernan, Secretary of the California Department of Corrections and Rehabilitation, and
23 Kamala D. Harris, former Attorney General of California,¹ (“Respondents”) Motion to
24 Dismiss. Respondents argue the Court should dismiss the Petition for lack of jurisdiction,
25 or in the alternative, for mootness. (*See* ECF No. 8.)
26

27
28 ¹ Kamala D. Harris was the Attorney General of California from January 3, 2011 to January 3, 2017. On
January 24, 2017, Xavier Becerra assumed the role as the current Attorney General of California.

1 For the reasons that follow, the Court **RECOMMENDS** the Motion be **GRANTED**
2 and the Petition **DISMISSED** with prejudice.

3 **II. BACKGROUND**

4 **A. State Court Background**

5 On August 13, 2014, a jury convicted Petitioner of violating California Penal Code
6 Section 422, making a criminal threat. (ECF No. 9-1 at 139.)² On December 2, 2014, the
7 state court sentenced Petitioner to sixteen months in state prison. (ECF No. 9-2 at 133.) At
8 the time of that sentencing, Petitioner was granted 641 days of credit for time served. (*Id.*)
9 Prior to this, on April 4, 2014, the United States Marshals Service placed a detainer on
10 Petitioner, indicating Petitioner was wanted in a federal jurisdiction for trial upon release
11 from state custody. (ECF No. 9-2 at 131.) Petitioner was released from state custody and
12 transferred to federal custody on an unknown date. On or around September 8, 2015,
13 Petitioner was sentenced to 135 months in federal prison for unidentified charges (ECF No.
14 1 at 13).³

15 On December 8, 2014, Petitioner filed a direct appeal to the California court of
16 appeal claiming seven grounds for relief. (*See* ECF Nos. 1 at 2, 9-8.) The court of appeal
17 affirmed the trial court's judgment in full in an unpublished opinion issued on November
18 12, 2015. (ECF No. 9-11 at 1.) On December 14, 2015, Petitioner sought review in the
19 Supreme Court of California, raising the same seven claims. (*Id.*) The petition for review
20 was denied without comment on February 17, 2016. (ECF No. 9-13.) Petitioner did not
21 seek collateral review of his claims.

22 **B. Federal Court Background**

23 On January 17, 2017, Petitioner filed a Petition for Writ of Habeas Corpus pursuant
24

25 ² All citations are to the page numbers inserted by Pacer unless otherwise noted.

26 ³ The precise date on which Petitioner was released from state custody into federal custody is highly
27 relevant when addressing the "in custody" requirement of 28 U.S.C. § 2254. However, in the instant
28 case, Petitioner has conceded that he was not in state custody when he filed the present Petition. (*See*
ECF No. 11 at 3-4.) Additionally, the charges in which Petitioner was charged federally is irrelevant for
the present motion. Given this, the Court did not request further briefing on these issues.

1 to 28 U.S.C. Section 2254, which sought to attack his 2014 state court conviction. (ECF
2 No. 1.) On April 28, 2017, Respondents filed a motion to dismiss arguing the court lacks
3 jurisdiction or, in the alternative, the Petition is moot. (See ECF Nos. 8, 8-1.) On June 5,
4 2017, Petitioner timely filed a Response in Opposition. (ECF. No. 11.)

5 **III. DISCUSSION**

6 **A. “In Custody” Requirement**

7 **i. Petitioner Does Not Meet The “In Custody” Requirement Pursuant** 8 **To § 2254**

9 Respondents move to dismiss the Petition for lack of jurisdiction. (ECF No. 8-1 at
10 1.) Respondents argue Petitioner does not fulfill the “in custody” requirement pursuant to
11 28 U.S.C. § 2254 because he was not in state custody when he filed the Petition. (*Id.*) In
12 his reply to Respondents’ Motion to Dismiss, Petitioner concedes that he had fully served
13 his state sentence and was not under state court supervision at the time he filed the Petition.
14 (ECF No. 11 at 3-4.)

15 Subject matter jurisdiction under 28 U.S.C. § 2254 is limited to those persons “in
16 custody pursuant to the judgment of a State court.” 28 U.S.C. § 2254(a); *Brock v. Weston*,
17 31 F.3d 887, 889 (9th Cir. 1994). As a result, once a petitioner’s sentence has fully expired,
18 he is precluded from challenging that sentence because he is no longer “in custody” for
19 purposes of federal habeas review. *Maleng v. Cook*, 490 U.S. 488, 492, 109 S.Ct. 1923,
20 104 L.Ed.2d 540 (1989). However, the “in custody” requirement of § 2254 may be met
21 even if the petitioner is not physically confined. For example, the Supreme Court has held
22 an individual remains “in custody” for purposes of federal habeas relief while on parole or
23 probation, and after release pending appeal. *See, e.g., Hensley v. Municipal Court*, 411 U.S.
24 345, 348-49, 93 S.Ct. 1571, 36 L.Ed.2d 294 (1973) (release pending appeal); *Jones v.*
25 *Cunningham*, 371 U.S. 236, 240-43, 83 S.Ct. 373, 9 L.Ed.2d 285 (1963) (parole); *Chaker*
26 *v. Crogan*, 428 F.3d 1215, 1219 (9th Cir. 2005) (probation), cert. denied, 547 U.S. 1128,
27 126 S.Ct. 2023, 164 L.Ed.2d 780 (2006).

28 The Supreme Court has recognized, in extremely limited circumstances, that a

1 petitioner may challenge an expired state court conviction through a federal habeas petition
2 when the prior conviction is used to enhance a current state court conviction. *Lackawanna*
3 *County District Attorney v. Coss*, 532 U.S. 394, 404-05, 121 S.Ct. 1567, 149 L.Ed.2d 608
4 (2001). However, and most pertinent here, the Supreme Court has not extended that
5 reasoning to federal convictions that may have been enhanced by prior state convictions.

6 Here, Petitioner concedes he has fully served his 2014 state sentence and, as a result
7 he was not in state court custody nor under state court supervision when he filed the Petition
8 in January 2017 (ECF. No. 11 at 3-4.) The record supports this concession. On December
9 2, 2014, the state court granted Petitioner credit for 641 days, approximately twenty-one
10 months, already served in state custody, which exceeded his state sentence of sixteen
11 months. (ECF No. 9-7 at 35-36.) The state court did not sentence Petitioner to probation.
12 (*Id.*) Petitioner’s direct appeal process concluded on February 16, 2016, the date on which
13 the Supreme Court of California denied his Petition for review. *See* California Rules of
14 Court, Rule 8.532(b)(2)(A) (Supreme Court of California decision is final upon the filing
15 of “a denial of a petition for review of a Court of Appeal decision”). Lastly, Petitioner has
16 failed to collaterally attack the judgment with the state. Thus, Petitioner was not “in
17 custody” at the time he filed his Petition.

18 Since Petitioner served his entire sentence, was not on parole or probation, and he
19 was not awaiting disposition of an appeal, Petitioner was not in custody pursuant to the
20 judgment of a state court in January of 2017 when his Petition was filed. Thus, his Petition
21 pursuant to § 2254 cannot be granted.

22 **ii. Petitioner Does Not Meet The “In Custody” Requirement Pursuant To**
23 **§ 2255**

24 A district court may properly construe a petition for writ of habeas corpus filed
25 pursuant to 28 U.S.C. Section 2254 as one filed pursuant to 28 U.S.C. Section 2255 when
26 a petitioner challenges a federal sentence that was enhanced by a state court conviction and
27 the petitioner is presently in federal custody. *See Allen v. State of Or.*, 153 F.3d 1046 (9th
28 Cir. 1998). Similar to § 2254, subject matter jurisdiction for § 2255 claims requires a

1 petitioner be “in custody under sentence of” a federal court. 28 U.S.C. § 2255(a). However,
2 when “a prior conviction used to enhance a federal sentence is no longer open to direct or
3 collateral attack in its own right because the defendant failed to pursue those remedies
4 while they were available (or because the defendant did so unsuccessfully), then that
5 defendant is without recourse. [...] [T]he defendant may not collaterally attack his prior
6 conviction through a motion under § 2255.” *Daniels v. United States*, 532 U.S. 374, 382,
7 121 S.Ct. 1578, 149 L.Ed.2d 590 (2001).

8 Here, Petitioner pursued all direct remedies available but was ultimately
9 unsuccessful when the Supreme Court of California rejected his claims. Furthermore,
10 Petitioner failed to pursue collateral attack remedies that were available to him. Petitioner
11 is now “without recourse” and “may not collaterally attack his prior conviction through a
12 motion under § 2255.” *Id.* Given this, even construing the Petition as one made pursuant
13 to § 2255, the Petition must fail.

14 **iii. The Court Lacks Jurisdiction**

15 Since Petitioner was not in state custody when he filed his Petition and is without
16 recourse to those claims, the Court lacks jurisdiction over the Petition. Therefore, the Court
17 **RECOMMENDS** Respondents’ Motion to Dismiss be **GRANTED** and the Petition be
18 **DISMISSED** for lack of jurisdiction.

19 **B. Petitioner’s Claim For Relief Is Moot**

20 In an alternative argument, Respondents asks the Court to dismiss the Petition as
21 moot because Petitioner has already received the relief requested. (ECF No. 8-1 at 4.) In
22 his Response, Petitioner claims his state conviction added three criminal history points to
23 his federal sentencing, which enhanced his federal prison sentence. (ECF No. 11 at 6.)
24 Petitioner claims this enhancement constitutes a collateral consequence, and thus rendered
25 his claim not moot, citing *Chacon v. Wood*, 36 F.3d 1459 (9th Cir. 1994) in support of his
26 argument. (*Id.*)

27 Mootness is jurisdictional. *See Koppers Indus. v. U.S.E.P.A.*, 902 F.2d 756, 758 (9th
28 Cir. 1990). The fundamental issue in deciding mootness is whether there is a current

1 controversy to which effective relief can be granted. *American Rivers v. National Marine*
2 *Fishery Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (“If an event occurs that prevents the
3 court from granting effective relief, the claim is moot and must be dismissed.”). “This
4 means that, throughout the litigation, the Plaintiff must have suffered, or be threatened
5 with, an actual injury traceable to the defendant and likely to be redressed by a favorable
6 judicial decision.” *Spencer v. Kemna*, 523 U.S. 1, 7, 118 S.Ct 978, 140 L.Ed.2d 43 (1998)
7 (citation and quotation marks omitted).

8 In the context of whether a habeas petition is moot, the “analysis is specifically
9 limited to the sort of equitable relief [a court] may grant in response to a habeas petition.”
10 *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005). A habeas petition is moot when the
11 petitioner “seeks relief [that] cannot be redressed by a favorable decision of the court
12 issuing a writ of habeas corpus.” *Id.* at 1000-01 (citation, quotation marks, and ellipses
13 omitted). A petition for habeas corpus becomes moot when a prisoner who requests release
14 from custody is released before the court has addressed the merits of the petition. *Lane v.*
15 *Williams*, 455 U.S. 624, 631, 102 S.Ct. 1322, 71 L.Ed.2d 508 (1982); *Picrin–Peron v.*
16 *Rison*, 930 F.2d 773, 775–76 (9th Cir.1991); *Cox v. McCarthy*, 829 F.2d 800, 803 (9th
17 Cir.1987) (“Petitioners cannot be released from a term of incarceration that they have
18 already served.) “For a habeas petition to continue to present a live controversy, after the
19 petitioner’s release ..., ... there must be some remaining ‘collateral consequence’ that may
20 be redressed by success on the petition.” *Abdala v. Immigration and Naturalization*
21 *Service*, 488 F.3d 1061, 1064 (9th Cir. 2007).

22 Petitioner’s sole alleged collateral consequence is that his federal sentence was
23 enhanced by the challenged state court conviction. However, as stated above, the Supreme
24 Court has explicitly barred relief for the precise claim that Petitioner asserts. *See Daniels*,
25 532 U.S. at 382. Since the relief Petitioner seeks “cannot be redressed by a favorable
26 decision of the court,” his Petition is moot.

27 Petitioner’s reliance on *Chacon* is misplaced because the facts from *Chacon* are
28 distinguishable from the present set of facts. In *Chacon*, the petitioner filed his petition for

1 writ of habeas corpus *prior* to being released from state custody but his appeal with the
2 Ninth Circuit Court of Appeals remained pending after he was released. *Chacon v. Wood*,
3 36 F.3d 1459, 1463 (9th Cir. 1994). Here Petitioner filed his Petition several years *after* he
4 had been released from state custody.

5 Having found the Petition to be moot the Court **RECOMMENDS** the motion be
6 **GRANTED** on the alternate ground the Petition is moot and the Petition **DISMISSED**.

7 **IV. CONCLUSION**

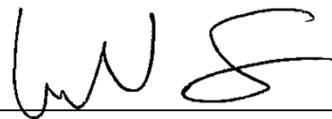
8 For the reasons set forth herein, it is **RECOMMENDED** that Respondents' Motion
9 to Dismiss be **GRANTED** with prejudice and the Petition **DISMISSED**. This Report and
10 Recommendation is submitted to the United States District Judge assigned to this case, the
11 Honorable Anthony J. Battaglia, pursuant to the provision of 28 U.S.C. § 636(b)(1) and
12 Federal Rule of Civil Procedure 72(b).

13 **IT IS ORDERED** that no later than **August 23, 2017**, any party to this action may
14 file written objections with the Court and serve a copy on all parties. The document shall
15 be captioned "Objections to Report and Recommendation." The parties are advised that
16 failure to file objections within the specified time may waive the right to raise those
17 objections on appeal of the Court's order. *See Turner v. Duncan*, 158 F.3d 449, 455 (9th
18 Cir. 1998).

19 **IT IS FURTHER ORDERED** that any reply to objections shall be filed with the
20 Court and served on all parties no later than **August 30, 2017**.

21 **IT IS SO ORDERED.**

22 Dated: July 25, 2017



23
24 Hon. William V. Gallo
25 United States Magistrate Judge
26
27
28