

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

DOMENCIO LONARDO,	:	
	:	
Petitioner	:	
	:	CIVIL NO. 3:CV-16-2324
	:	
v.	:	(Judge Conaboy)
	:	
KATHY LANE,	:	
	:	
Respondent	:	

MEMORANDUM
Background

Domencio Lonardo filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 while confined at the Allenwood Low Federal Correctional Institution, White Deer, Pennsylvania (LFCI-Allenwood). Service of the petition was previously ordered.

Lonardo's pending action does not challenge the legality of his underlying federal criminal conviction and sentence which was imposed by the United States District Court for the Western District of New York. Rather, Petitioner claims entitlement to federal habeas corpus relief on the basis that the LFCI-Allenwood staff and the Federal Bureau of Prisons (BOP) acted improperly and abused their discretion by only recommending him for a sixty (60) day pre-release placement in a Residential Reentry Center ("RRC" or "halfway house"). See Doc. 1, ¶ 6.

Petitioner maintains that pursuant to the Second Chance Act, he is entitled to halfway house placement.¹ However, he asserts that the recommended sixty (60) day period is less than 10% of his sentence and other similarly situated prisoners have been recommended for a longer halfway house placement

Lonardo adds that being afforded longer placement would provide him with opportunity to obtain treatment for a medical condition and allow him adequate opportunity to secure housing upon his release..

On July 13, 2017, Respondent filed a "Notice of Suggestion of Mootness" stating that Lonardo has been released from federal custody into an RRC. Doc. 8, p. 1. Consequently, Respondent seeks dismissal of the petition since the only habeas corpus issue raised by Lonardo is moot.

¹ The Second Chance Act of 2007 codified at 18 U.S.C. §§ 3621, 3624, increases an inmate's eligibility for pre-release placement and requires the BOP to make an individual determination that ensures that the placement is "of sufficient duration to provide the greatest likelihood of successful reintegration into the community." 18 U.S.C. § 3624(c)(6)(C) (Apr. 9, 2008).

In making this determination, the following five criteria from 18 U.S.C. § 3621(b) are to be considered: (1) the resources of the facility contemplated; (2) the nature and circumstances of the offense; (3) the history and characteristics of the prisoner; (4) any statement by the sentencing court concerning the purpose for which the sentence was imposed or a recommendation of a particular type of correctional facility; and (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of Title 28. 18 U.S.C. § 3621(b).

Discussion

Habeas corpus review under § 2241 "allows a federal prisoner to challenge the 'execution' of his sentence." Woodall v. Federal Bureau of Prisons, 432 F.3d 235, 241 (3d Cir. 2005).

A habeas corpus petition may be brought by a prisoner who seeks to challenge either the fact or duration of his confinement in prison. Preiser v. Rodriguez, 411 U.S. 475 (1973), Telford v. Hepting, 980 F.2d 745, 748 (3d Cir.), cert. denied, 510 U.S. 920 (1993). Federal habeas relief is available only "where the deprivation of rights is such that it necessarily impacts the fact or length of detention." Leamer v. Fauver, 288 F.3d 532, 540 (3d Cir. 2002). Since Lonardo's claim of denial of sufficient halfway house placement conceivably impacted the length of his imprisonment, this matter was properly raised under § 2241. See Woodall, 432 F.3d at 243-44 (claims regarding denial of halfway house placement properly sound in habeas corpus).

The case or controversy requirement of Article III, § 2 of the United States Constitution subsists through all stages of federal judicial proceedings. Parties must continue to have a "'personal stake in the outcome' of the lawsuit." Lewis v. Continental Bank Corp., 494 U.S. 472, 477-78 (1990); Preiser v. Newkirk, 422 U.S. 395, 401 (1975). In other words, throughout

the course of the action, the aggrieved party must suffer or be threatened with actual injury caused by the defendant. Lewis, 494 U.S. at 477.

The adjudicatory power of a federal court depends upon "the continuing existence of a live and acute controversy." Steffel v. Thompson, 415 U.S. 452, 459 (1974) (emphasis in original). "The rule in federal cases is that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." Id. at n.10 (citations omitted). "Past exposure to illegal conduct is insufficient to sustain a present case or controversy ... if unaccompanied by continuing, present adverse effects." Rosenberg v. Meese, 622 F. Supp. 1451, 1462 (S.D.N.Y. 1985) (citing O'Shea v. Littleton, 414 U.S. 488, 495-96 (1974)); see also Gaeta v. Gerlinski, Civil No.3:CV-02-465, slip op. at p. 2 (M.D. Pa. May 17, 2002) (Vanaskie, C.J.).

As explained in Burkey v. Marberry, 556 F.3d 142, 147 (3d Cir. Feb. 18, 2009). in the context of a habeas corpus challenge to the execution of a sentence under 28 U.S.C. § 2241, "[i]ncarceration satisfies the case or controversy requirement; it is a concrete injury." Id. However, once the petitioner has been released, "some continuing injury, also referred to as a collateral consequence, must exist for the action to continue." Id. See also United States v. Jackson, 523 F.3d 234, 241 (3d

Cir. 2008).

Lonardo's sole claim asserts that he was improperly denied a sufficient period of halfway house placement. Respondent has notified the Court that Petitioner has been released from prison to an RRC. A review of the BOP's inmate locator computerized database shows that Petitioner is presently residing in a RRC located in the Pittsburgh, Pennsylvania area and will be released from facility on August 29, 2017.

The Supreme Court in Spencer v. Kemna, 523 U.S. 1, 7 (1998), held that release of a petitioner from custody on a parole violator term deprived federal courts of the power to act. Significantly, the Court found that there were no "collateral consequences" remaining after expiration of the parole violator term sufficient to animate the matter with a case or controversy capable of concrete redress, explaining that federal courts "are not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong." Id. at 18. See also United States v. Kissinger, 309 F.3d 179, 181-82 (3d Cir. 2002) (a petitioner unconditionally released from probation cannot maintain challenge to sentence received for violating the terms of probation); Lane v. Williams, 455 U.S. 624, 632-34 (1982); Hagwood v. Grondolsky, 2009 WL 455499 *2 (D.N.J. Feb. 19,

2009) (a federal inmate's challenge to the BOP's reversal of a decision to place him on home confinement. became moot once the BOP placed the prisoner on home confinement).

Petitioner has not shown that he is suffering any collateral consequences as required under Spencer Johnson, and Kissinger stemming from the alleged prior failure of federal officials to provide him with a longer period of halfway house placement. As noted in Hagwood, the type of habeas claim asserted herein is mooted once a federal inmate is provided with halfway house placement.

Since Lonardo has been released from federal prison to an RRC, under the principles set forth in Steffel, his sole claim of being denied sufficient halfway house placement is subject to dismissal as moot since it no longer presents an existing case or controversy. An appropriate Order will enter.

S/Richard P. Conaboy
RICHARD P. CONABOY
United States District Judge

DATED: JULY 18, 2017