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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 BRANDON T. GATES,

11 Petitioner,

12 v.

13 JEFF UTTECH,

14 Respondent.

CASE NO. 2:21-cv-00690-RAJ-JRC

ORDER DENYING MOTIONS TO  
AMEND AND FOR AN  
EVIDENTIARY HEARING  
AND ORDER TO SHOW CAUSE

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16 Petitioner filed a petition under 28 U.S.C. § 2254. Dkt. 12. Before the Court are the  
17 petition, petitioner's motion to amend the petition (Dkt. 18), and petitioner's motion for  
18 evidentiary hearing (Dkt. 19). As discussed below, the Court denies the motion to amend and  
19 denies without prejudice the motion for evidentiary hearing. Furthermore, the Court orders  
20 petitioner to show cause why it should not dismiss the petition as moot.

21 Petitioner has been released from prison. Therefore, it appears that the Court cannot grant  
22 him the relief that he requests in his petition. So this Court orders petitioner to show cause why it  
23 should not dismiss the petition as moot. The Court denies petitioner's motion to amend because  
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1 the relief he requests is unavailable in a habeas corpus case. Also, the Court denies without  
2 prejudice petitioner’s motion for evidentiary hearing because it is premature and duplicates his  
3 prior request for an evidentiary hearing.

4 **BACKGROUND**

5 On July 21, 2020, pursuant to a guilty plea, the Island County Superior Court (“trial  
6 court”) adjudged petitioner guilty of tampering with a witness—domestic violence. Dkt. 17-1 at  
7 1–12. The trial court sentenced petitioner to 29 months’ imprisonment. *Id.* at 6.

8 Petitioner filed his petition. Dkt. 12. In his sole ground for relief, petitioner alleged that  
9 his “total confinement” was unlawful because the trial court ordered him to serve the “remaining  
10 balance of his sentence on electronic home monitoring or [its] equivalent.” *See id.* at 10–11. For  
11 relief, petitioner sought immediate release from prison on electronic home monitoring or its  
12 equivalent. *See id.* at 10–11, 26.

13 Respondent filed a response. Dkt. 16. As relevant here, respondent stated that petitioner  
14 was “expected to [be] release[d] from custody on September 14, 2021.” *Id.* at 1 (citing Dkt. 17-1  
15 at 18).

16 Petitioner filed a reply. Dkt. 20. In the reply, he repeated the contention that he is entitled  
17 to release on electronic home monitoring or its equivalent and requested an evidentiary hearing  
18 based on respondent’s failure to give him state court records. *See id.*

19 On September 3, 2021, petitioner filed notices with the Court updating his address and  
20 stating that he would be released on September 4, 2021. Dkts. 22–23.

**DISCUSSION**

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2 “Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing  
3 cases or controversies.” *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477 (1990). To satisfy this  
4 “case or controversy” requirement, “parties must continue to have a personal stake in the  
5 outcome of the lawsuit.” *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (citation and internal quotation  
6 marks omitted). If a party no longer has a personal stake in the outcome of the lawsuit, the  
7 lawsuit is moot and the court lacks jurisdiction to hear it. *See Lewis*, 494 U.S. at 477; *see also*  
8 *Spencer*, 523 U.S. at 7. “[C]ourts . . . have an independent obligation to determine whether . . .  
9 jurisdiction exists, even in the absence of a challenge from any party.” *Arbaugh v. Y&H Corp.*,  
10 546 U.S. 500, 514 (2006).

11 A petitioner’s release from prison may deprive him of a personal stake in the outcome of  
12 a lawsuit, thus mooting it. *See Spencer*, 523 U.S. at 7. A petitioner “wishing to continue his  
13 [habeas petition] after the expiration of his sentence must suffer some continuing injury or  
14 collateral consequence sufficient to satisfy Article III.” *See United States v. Juv. Male*, 564 U.S.  
15 932, 936 (2011) (citation and internal quotation marks omitted). “When the [petitioner]  
16 challenges his underlying *conviction*, [the Supreme Court’s] cases have long presumed the  
17 existence of collateral consequences.” *Id.* (citations omitted). “But when a [petitioner] challenges  
18 only an expired sentence, no such presumption applies.” *Id.* (citation omitted). Therefore, the  
19 petitioner bears “the burden of identifying some ongoing collateral consequence” that he can  
20 trace to the portion of the sentence that he challenges and that a favorable judicial decision can  
21 likely remedy. *See id.* (alteration adopted) (citation and internal quotation marks omitted).

22 Here, the petition appears to be moot. Petitioner has represented that he was released  
23 from prison on September 4, 2021, and respondent’s evidence is consistent with this  
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1 representation. Furthermore, petitioner argued that his judgment of conviction entitled him to  
2 immediate release on electronic home monitoring or its equivalent. Thus, petitioner challenged  
3 the legality of his sentence, not the legality of his underlying conviction. Therefore, petitioner  
4 must show an ongoing collateral consequence that he can trace to the challenged portion of his  
5 sentence and that an order of this Court would likely remedy. But no such consequence is  
6 apparent on the face of the record. Notably, petitioner has already received the relief he sought,  
7 i.e., release from incarceration.

8 In short, the petition appears to be moot. So petitioner must show cause why this Court  
9 should not dismiss the petition as moot.

10 Petitioner filed a motion to amend his petition. Dkt. 18. In this motion, petitioner  
11 expressed concern that he would have served his entire sentence before the Court ruled on the  
12 petition. *Id.* at 2. Therefore, he sought a declaratory judgment that his petition was meritorious.  
13 *See id.* at 3.

14 This motion is deficient. For one, petitioner failed to “attach a copy of the proposed  
15 amended pleading as an exhibit to the motion.” Local Rule 15. Furthermore, petitioner  
16 essentially seeks a judgment declaring that his petition is meritorious. But the Court cannot grant  
17 such relief here because “the Declaratory Judgment Act may not be used as a substitute for  
18 habeas corpus.” *Benson v. State Bd. of Parole & Prob.*, 384 F.2d 238, 240 (9th Cir. 1967)  
19 (citation and quotation marks omitted). This “futility of amendment” warrants denial of this  
20 motion. *See Foman v. Davis*, 371 U.S. 178, 182 (1962).

21 The Court denies petitioner’s motion for evidentiary hearing without prejudice. Petitioner  
22 contends that respondent has not “furnished” relevant “transcripts” and “sentencing hearing  
23 minutes,” including the plea hearing transcript. Dkt. 19 at 1–2. However, petitioner raised this  
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1 argument in his reply. Dkt. 20 at 9–11. So this motion is duplicative. Furthermore, the petition  
2 appears to be moot. Therefore, any order directing respondent to provide state court records, or  
3 any evidentiary hearing in this regard, would be premature. If petitioner manages to show cause  
4 why this Court should not dismiss the petition as moot, this Court will order respondent to  
5 address this issue. This Court’s review of the record does not indicate that petitioner would  
6 require any additional state court record to show that his petition is not moot.

7 Accordingly, this Court **ORDERS** as follows:

8 1. On or before **October 20, 2021**, petitioner **must file** a response to this order in  
9 which he shows cause why this Court should not dismiss the petition as moot.

10 2. The response, whether handwritten or typewritten, **must not exceed ten (10)**  
11 **pages** and **must comply** with this District’s Local Rules governing form of filings, including  
12 Rules governing text size, margin size, and line spacing. Local Rule 10(e)(1).

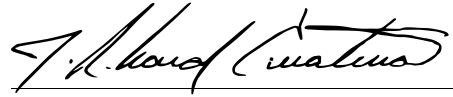
13 3. The response **must not** incorporate by reference any argument or text from any  
14 other document, including any exhibit. However, petitioner may, if he wishes, submit any  
15 document or evidence necessary to support the response.

16 4. On or before **November 1, 2021**, respondent must file a reply to petitioner’s  
17 response to this show cause order. The reply must comply with paragraphs 2 and 3 in this  
18 instructional part of this order.

19 5. Failure to comply with this order **may result in dismissal of the petition or the**  
20 **imposition any appropriate sanction.**

21 Petitioner’s motion to amend (Dkt. 18) is **DENIED**. Petitioner’s motion for evidentiary  
22 hearing (Dkt. 19) is **DENIED WITHOUT PREJUDICE**. The clerk is **DIRECTED** to send  
23 petitioner a copy of this order and to **RENOTE** the petition for **November 1, 2021**.

1 Dated this 20th day of September, 2021.

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3 J. Richard Creatura  
4 Chief United States Magistrate Judge

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