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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CYRUS N PLUSH,

Petitioner,

v.

JEFFREY A UTTECHT,

Respondent.

CASE NO. 3:20-CV-05258-BHS-DWC

ORDER

The District Court has referred this action filed under 28 U.S.C. § 2254 to United States Magistrate Judge David W. Christel. Petitioner initiated this action challenging his state court convictions and sentence. *See* Dkt. 1, 11, 32. Petitioner is “in custody” under a 2018 state court judgment and sentence imposed for his 2016 conviction for failure to register as a sex offender.

Dkt. 20, Exhibit 1, Judgment and Sentence (2018), Grays Harbor County Cause No. 16-1-00096-

0.¹

¹ Although Petitioner is currently serving a prison sentence imposed for a later 2019 Cowlitz County conviction for failure to register as a sex offender, *see* Dkt. 20, Exhibit 2, Judgment and Sentence, Cowlitz County Cause No. 19-1-00759-8, Petitioner remains “in custody” under the 2018 sentence because he must serve a term of community custody on that 2018 sentence following his release from prison. *See* Dkt. 19 at 1.

1 On January 25, 2021, after reviewing the record and noting a discrepancy between the
2 grounds raised in the original Petition (Dkt. 11), and the grounds addressed by Respondent in the
3 Answer (Dkt. 19), the Court ordered Petitioner to file an amended petition to ensure there is no
4 uncertainty as to which grounds were raised. Dkt. 25. Plaintiff was informed an amended petition
5 would act as an original substitute to his original Petition. *Id.* On May 3, 2021, after several
6 extensions, Petitioner filed his Amended Petition. Dkt. 26, 27, 28, 29, 30, 31, 32. Petitioner
7 raises twelve grounds for relief. Dkt. 32.

8 Respondent's Answer attacks the original Petition, which is now substituted by the
9 Amended Petition. *See* Dkt. 11, 19, 32. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992)
10 (An amended pleading supersedes the original pleading.); *Canez v. Ryan*, 25 F. Supp. 3d 1250,
11 1258 (D. Ariz. 2014); *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) *overruled on other grounds*
12 *by Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012) (The original pleading is "treated
13 thereafter as non-existent."). To ensure the parties are provided with an adequate opportunity to
14 brief the Amended Petition, the Court orders the following:

- 15 • Respondent is directed to file, on or before June 11, 2021, a supplemental answer
16 addressing the grounds raised in the Amended Petition. If Respondent wishes to rely on the
17 briefing provided in the original Answer, he may file notice with the Court stating as such.
- 18 • Petitioner may file a supplemental traverse (response to the supplemental answer)
19 addressing on or before June 18, 2021.
- 20 • Respondent may file a reply to the supplemental traverse on or before June 25, 2021.

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The Clerk of Court is directed to note the Amended Petition (Dkt. 32) for consideration on June 25, 2021.

Dated this 12th day of May, 2021.



David W. Christel
United States Magistrate Judge