

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ANTHONY L. HOOD, )  
 )  
 Petitioner, )  
 )  
 v. )  
 ) Civil Action No. 00-538-SLR  
 ROBERT GEORGE, Warden, and )  
 ATTORNEY GENERAL OF THE )  
 STATE OF DELAWARE, )  
 )  
 Respondents. )

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Anthony L. Hood, Sussex Correctional Institution, Georgetown,  
Delaware. Petitioner, pro se.

Loren C. Meyers, Esquire, Chief of Appeals Division, Delaware  
Department of Justice, Wilmington, Delaware. Counsel for  
Respondents.

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**MEMORANDUM OPINION**

Dated: April 12, 2002  
Wilmington, Delaware

**ROBINSON, Chief Judge**

**I. INTRODUCTION**

Petitioner Anthony L. Hood is a former inmate at the Sussex Correctional Institution in Georgetown, Delaware. Currently before the court is petitioner's document captioned "Petition for Writ of Mandamus," (D.I. 2), which the court has treated as an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Because petitioner's application for habeas relief is moot, the court will dismiss it without reaching the merits of his claims.

**II. BACKGROUND**

On August 21, 1998, the Delaware Superior Court sentenced petitioner to five years in prison at Level V custody for first degree robbery. (D.I. 12, Sentencing Order.) The sentence was suspended after two years for six months of work release at Level IV, followed by two and one-half years of probation at Level III. (Id.) The Superior Court modified its sentencing order on January 21, 2000, to require that petitioner be held in custody at Level V until space was available at Level IV. (Id., Amended Sentencing Order.)

On April 5, 2000, while incarcerated at the Sussex Correctional Institution, petitioner filed with this court the current application for habeas relief. In his application, petitioner alleges that the Superior Court violated his constitutional rights by modifying its order to hold him at Level

V until space was available at Level IV. (D.I. 2.) Shortly after filing his application, petitioner was placed on Level IV work release.

On July 25, 2000, the Superior Court found petitioner guilty of violating the conditions of release, and sentenced him to three years in prison to be suspended after six months for home confinement followed by probation. (Id., Violation of Probation Order.) In December 2000, petitioner was placed on home confinement. On March 9, 2001, however, the Superior Court found that petitioner had violated the conditions of home confinement, revoked his release, and resentenced him.

In their answer to petitioner's application for habeas relief, respondents ask the court to dismiss the application as moot. (D.I. 11.) As discussed below, the court agrees with respondents, and will dismiss the application.

### **III. DISCUSSION**

#### **A. Mootness**

Initially, the court must determine whether petitioner's application for habeas relief is moot. Shortly after filing his federal habeas petition, petitioner was removed from Level V custody and placed in Level IV work release. At that point, the alleged unlawful execution of sentence of which he complains ceased. If this renders petitioner's application moot, the court lacks jurisdiction and must dismiss it. Chong v. District

Director, INS, 264 F.3d 378, 383-84 (3d Cir. 2001) (citing Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 90 (1998)). Federal courts must resolve mootness issues, "even when not raised by the parties, before turning to the merits." Chong, 264 F.3d at 383.

Pursuant to Article III, the power of federal courts extends only to cases and controversies. Id. at 383. A litigant has standing to pursue a case or controversy in federal court only if he "has suffered, or is threatened with, an actual injury traceable to the [respondent] that is likely to be redressed by a favorable decision." Id. at 384. This "personal stake in the outcome" of a case must continue throughout the litigation. Spencer v. Kemna, 523 U.S. 1, 7 (1998).

An individual who has been convicted and is incarcerated as a result of that conviction always has standing to challenge his incarceration. Id. If his sentence expires while the litigation is pending, he must demonstrate a "concrete and continuing injury" in order to maintain standing in federal court. Id. Federal courts presume that "a wrongful criminal conviction has continuing collateral consequences" sufficient to satisfy the injury requirement, even after the sentence expires. Id. at 8. Where a petitioner does not attack his **conviction**, however, the injury requirement is not presumed; rather, the petitioner must demonstrate continuing collateral consequences adequate to meet

the injury requirement. Id. at 14; Chong, 264 F.3d at 384.

In the matter at hand, petitioner does not challenge his conviction in any way. His habeas petition challenges only the execution of his sentence, i.e., holding him at Level V until space was available at Level IV. This alleged unlawful execution of sentence ceased once he was placed at Level IV work release. To maintain standing to challenge the execution of his sentence, petitioner must demonstrate continuing collateral consequences sufficient to meet the injury requirement.

The court is unable to find any such continuing collateral consequences. Once petitioner was removed from Level V custody, the court cannot discern any injury that could be redressed by a favorable decision in the current matter. Absent any conceivable continuing injury, petitioner no longer has standing to maintain this action. For this reason, the court will dismiss his habeas petition as moot.

#### **B. Certificate of Appealability**

Finally, the court must determine whether a certificate of appealability should issue. See Third Circuit Local Appellate Rule 22.2. The court may issue a certificate of appealability only if petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

When a federal court dismisses a habeas petition on procedural grounds without reaching the underlying constitutional

claims, the prisoner must demonstrate that jurists of reason would find it debatable: (1) whether the petition states a valid claim of the denial of a constitutional right; and (2) whether the court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." Id.

For the reasons discussed above, the court has concluded that petitioner's application for habeas relief is moot. The court is convinced that reasonable jurists would not debate otherwise. Petitioner, therefore, has failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability is not warranted.

#### **IV. CONCLUSION**

For the reasons stated, the court will dismiss petitioner's application for a writ of habeas corpus as moot, and will not issue a certificate of appealability. An appropriate order shall issue.

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O R D E R

At Wilmington, this 12th day of April, 2002, consistent with the memorandum opinion issued this same day;

IT IS HEREBY ORDERED that:

1. Petitioner Anthony L. Hood's petition for writ of mandamus, (D.I. 2), treated as an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, is dismissed as moot.
2. The court declines to issue a certificate of appealability for failure to satisfy the standard set forth in 28 U.S.C. § 2253(c)(2).

Sue L. Robinson  
United States District Judge