

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

ELWOOD JAMES HARRIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 00-390-GMS
	)	
RAPHAEL WILLIAMS, Warden, and	)	
ATTORNEY GENERAL OF THE	)	
STATE OF DELAWARE,	)	
	)	
Respondents.	)	
	)	

**MEMORANDUM AND ORDER**

After finding that Elwood James Harris violated the conditions of his probation, the Delaware Superior Court revoked his probation and sentenced him to one year in prison. Harris then filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, seeking to challenge the revocation of his probation. (D.I. 2.) At the time he filed his petition, Harris was incarcerated at the Multi-Purpose Criminal Justice Facility in Wilmington, Delaware. For the following reasons, the court will dismiss Harris’ petition.

**I. BACKGROUND**

On June 10, 1996, Harris pleaded guilty in the Superior Court to conspiracy and possession of marijuana within 300 feet of a park. The Superior Court sentenced Harris to two and one-half years probation. On February 11, 2000, the Superior Court concluded that Harris violated the conditions of his probation, revoked probation, and sentenced him to one year in prison. The Superior Court specified that Harris was to be “discharged as unimproved” at the

expiration of the one-year term. Harris did not appeal to the Delaware Supreme Court.

On March 20, 2000, Harris filed with the court the current petition for federal habeas corpus relief. In his habeas petition, Harris alleges that: (1) he did not receive proper notice of the violations; (2) the Superior Court refused to consider his medical records or listen to his arguments at sentencing; (3) the public defender rendered ineffective assistance at the revocation hearing; and (4) he has fully served his sentences from his past convictions. (D.I. 2.) Shortly thereafter, Harris filed in the Superior Court a motion for postconviction relief pursuant to Rule 61 of the Superior Court Rules of Criminal Procedure. The Superior Court summarily dismissed the motion. *State v. Harris*, No. VN96040043R1, 2000 WL 1611060 (Del. Super. Ct. Sept. 19, 2000). Again, Harris did not appeal to the Delaware Supreme Court. On October 20, 2000, the Superior Court modified Harris' sentence by suspending the remaining time for probation.

In their supplemental answer, the respondents ask the court to dismiss Harris' petition on the ground that his claims are procedurally barred from federal habeas review. Alternatively, the respondents assert that the petition must be dismissed as moot.

## **II. DISCUSSION**

Before considering whether Harris' claims are procedurally barred from federal habeas review, the court must address respondents' contention that the petition is moot. Harris satisfied his one-year sentence and was discharged from probation after he filed the current habeas petition. If this renders his petition 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 his conviction always has standing to challenge his incarceration. *Id.* If his sentence expires and he is released 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, Harris does not challenge his conviction in any way. Rather, he attacks only the revocation of his probation. Plainly, the period of incarceration resulting from the alleged unlawful revocation of probation ceased once he was discharged. To maintain standing to challenge the revocation of his probation, he must demonstrate continuing collateral consequences sufficient to meet the injury requirement. *See United States v. Propper*, 170 F.3d 345, 348 (2d Cir. 1999)(refusing under *Spencer* to presume collateral consequences where

petitioner violated terms of supervised release).

Harris has failed to identify any such continuing collateral consequences. Moreover, now that he has been discharged from probation, the court cannot discern any injury that could possibly be redressed by a favorable decision in the current habeas petition. In the absence of any conceivable continuing injury, Harris no longer has standing to maintain this action. Accordingly, the court will dismiss his petition as moot.<sup>1</sup>

### III. 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 petitioner 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.”

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<sup>1</sup> In reaching this conclusion, the court does not suggest that the petition is moot because Harris no longer satisfies the “in custody” requirement. Harris satisfies the “in custody” prerequisite because he was in custody when he filed his petition. *See Spencer*, 523 U.S. at 7 (stating that the “in custody” requirement is satisfied if petitioner was incarcerated at the time he filed his petition).

*Id.*

For the reasons discussed above, the court has concluded that Harris' habeas petition is moot. The court is persuaded that reasonable jurists would not debate otherwise. Harris has, therefore, failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not be issued.

#### **IV. CONCLUSION**

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Elwood James Harris' petition 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).

IT IS SO ORDERED.

Dated: June 14, 2002

Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE