

Farnan, District Judge.

Presently before the Court is a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (D.I. 2) filed by Petitioner Charleston E. Lovett. For the reasons set forth below, the Court will dismiss the Petition as moot.

I. BACKGROUND

On July 12, 2001, Petitioner pleaded guilty in the Delaware Superior Court to delivery of cocaine and possession of drug paraphernalia. The Superior Court sentenced Petitioner to successful completion of the "Boot Camp Diversion Program," followed by probation. The Superior Court specified that Petitioner was to be held at Level V custody pending availability in the Boot Camp Program, but that his Level V custody was not to exceed sixty days. The Superior Court also ordered that Petitioner be returned for further sentencing if he failed to successfully complete the Boot Camp Program. Petitioner did not appeal to the Delaware Supreme Court.

On November 2, 2001, Petitioner filed with the Court the current Petition seeking federal habeas corpus relief. His sole allegation is that he is being held at Level V custody rather than being placed in the Boot Camp Program as ordered by the Superior Court. (D.I. 2.) Respondents assert that Petitioner was admitted to the Boot Camp Program on November 7, 2001, and ask the Court to dismiss the Petition as moot.

II. DISCUSSION

A. Mootness

The record reflects that Petitioner was removed from Level V custody and placed in the Boot Camp Program just a few days after he filed his Petition. At that point, the alleged unlawful execution of sentence of which he complains ceased. If this renders the 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 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 the legality of his conviction or sentence in any way. Rather, his habeas petition challenges only the **execution** of his sentence, i.e., holding him at Level V custody rather than transferring him to the Boot Camp Program. This alleged unlawful execution of sentence ceased once he was placed in the Boot Camp Program. To maintain standing to challenge the execution of his sentence, then, 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 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 denies a habeas petition on procedural grounds without reaching the underlying constitutional claim, 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 current Petition is moot and must be dismissed. 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 will not issue.

III. CONCLUSION

For the reasons discussed above, the Court will dismiss as moot the Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody filed by Petitioner Charleston E. Lovett. The Court will not issue a certificate of appealability.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHARLESTON E. LOVETT, :
 :
 Petitioner, :
 :
 v. : Civil Action No. 01-782-JJF
 :
 THOMAS L. CARROLL, Warden, :
 and ATTORNEY GENERAL OF :
 THE STATE OF DELAWARE, :
 :
 Respondents. :
 :

O R D E R

At Wilmington, this 27th day of June 2002, for the reasons
set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Petitioner Charleston E. Lovett's Petition Under 28
U.S.C. § 2254 for Writ of Habeas Corpus by a Person in
State Custody (D.I. 2) is DISMISSED AS MOOT, and the
relief requested therein is DENIED.
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).

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE