

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

RAFAEL A. PADILLA,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 98-661-GMS
)	
SHERESE BREWINGTON-CARR, Warden,)	
and ATTORNEY GENERAL OF THE)	
STATE OF DELAWARE,)	
)	
Respondents.)	

MEMORANDUM AND ORDER

After being arrested in Delaware for trafficking in cocaine, Rafael A. Padilla filed with the court¹ a petition for a writ of habeas corpus. At the time he filed his habeas petition, Padilla was in custody at the Multi-Purpose Criminal Justice Facility in Wilmington, Delaware, charged with trafficking in cocaine. In his petition, he alleges that his pretrial detention violated the Uniform Extradition Act and his constitutional rights. For the reasons that follow, the court will dismiss Padilla’s habeas petition.

I. BACKGROUND

On August 20, 1998, Rafael Padilla was arrested in New Castle County, Delaware, for trafficking in cocaine. The Delaware Superior Court set bail at \$18,000. Shortly thereafter, New

¹ This matter was originally assigned to the Honorable Joseph J. Longobardi, but was reassigned to this court on August 18, 1999.

Jersey authorities lodged a detainer against Padilla, charging him with possession of cocaine.

According to Padilla, he posted bail in full on the Delaware charge and demanded an extradition hearing.² He alleges that despite his numerous demands, Delaware authorities refused to release him or convene an extradition hearing.

On October 14, 1998, Padilla filed with the court the current petition for a writ of habeas corpus, labeled as a petition pursuant to 28 U.S.C. 2254. In his habeas petition, Padilla asserts that Delaware's refusal to release him on bond or to conduct an extradition hearing violated the Uniform Extradition Act and his constitutional rights.

Shortly thereafter, on November 1, 1998, Padilla filed in the Superior Court a petition for a writ of habeas corpus, seeking his immediate release from custody. On November 9, 1998, however, Padilla pleaded guilty to the pending charge of trafficking in cocaine and was sentenced to boot camp. The Superior Court then dismissed Padilla's state habeas petition as moot.

The respondents ask the court to dismiss Padilla's current habeas petition on the ground that his claims are procedurally barred from federal habeas review.

II. DISCUSSION

Initially, the court must determine whether 28 U.S.C. § 2254 authorizes the court to entertain Padilla's habeas petition. By its terms, § 2254 requires federal courts to "entertain an application for a

² The respondents do not agree that Padilla posted bail. (D.I. 7, ¶ 5.) As the respondents acknowledge, however, the court need not resolve this factual dispute. Even if Padilla is correct, the court cannot grant his habeas petition, as explained below.

writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court.” 28 U.S.C. § 2254(a). At the time Padilla filed his habeas petition, he had not been convicted or sentenced. Rather, he was in custody charged with trafficking in cocaine in violation of Delaware law. Because no “judgment of a State court” had yet been rendered, Padilla was not “in custody pursuant to the judgment of a State court.” For this reason, § 2254 does not authorize the court to entertain Padilla’s habeas petition.

Padilla’s misplaced reliance on § 2254, however, does not mandate dismissal of his habeas petition without further inquiry. The power of a federal court to grant a writ of habeas corpus extends to any prisoner who “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). Unlike § 2254, § 2241 authorizes federal courts to issue the writ “before a judgment is rendered in a state criminal proceeding.” *Moore v. DeYoung*, 515 F.2d 437, 442 (3d Cir. 1975). For this reason, the court treats Padilla’s habeas petition as a § 2241 petition rather than a § 2254 petition.³

The court must next determine whether Padilla’s habeas petition is now moot. Shortly after filing his habeas petition, Padilla pleaded guilty and was sentenced. At that point, the alleged unlawful pretrial detention of which he complained ceased. If this renders Padilla’s habeas petition moot, the

³ In treating Padilla’s habeas petition as a § 2241 petition, the court is not unmindful of *Coady v. Vaughn*, 251 F.3d 480 (3d Cir. 2001). In *Coady*, the Third Circuit rejected a state prisoner’s attempt to rely on § 2241 to challenge the execution of his state sentence. *Id.* at 485. *Coady* suggests that state prisoners may not rely on § 2241 when challenging any incarceration “pursuant to the judgment of a State court.” *Id.* The court does not read *Coady* as proscribing reliance on § 2241 when a state prisoner challenges only his pretrial detention, and not the conviction or sentence of a state court.

court lacks jurisdiction and must dismiss it.⁴ *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 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.

⁴ The court does not suggest that Padilla’s petition is moot because he no longer satisfies the “in custody” requirement. Without question, Padilla satisfies the “in custody” requirement because he was incarcerated when he filed his petition. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998)(stating that a petitioner satisfies the “in custody” requirement if he was incarcerated at the time the petition was filed). Rather, as explained below, the court must determine whether Padilla continues to have a personal stake in the outcome of this case in light of the termination of his pretrial detention. *Id.*

In the matter at hand, Padilla does not challenge any conviction or sentence. His habeas petition challenges only his pretrial incarceration, a period of detention that ceased once he pleaded guilty to the pending charge of trafficking in cocaine. To maintain standing to challenge his pretrial incarceration, Padilla must demonstrate continuing collateral consequences sufficient to meet the injury requirement.

The court is unable to find any such continuing collateral consequences. Now that Padilla has admitted his guilt to the charge on which his pretrial detention was based, the court cannot discern any injury that could be redressed by a favorable decision in the current matter. Absent any conceivable continuing injury, Padilla no longer has standing to maintain this action. For this reason, the court will dismiss his habeas petition as moot. *See Thorne v. Warden, Brooklyn House of Detention for Men*, 479 F.2d 297, 299 (2d Cir. 1973)(dismissing as moot § 2241 petition challenging pretrial detention once petitioner was convicted).

III. CERTIFICATE OF APPEALABILITY

“At the time a final order denying a petition under 28 U.S.C. § 2254 or § 2255 is issued, the district judge shall make a determination as to whether a certificate of appealability should issue.” Third Circuit Local Appellate Rule 22.2. Rule 22.2 does not expressly apply when the court denies a § 2241 petition. Because the court is treating Padilla’s petition as a § 2241 petition, it appears that Rule 22.2 does not require the court to determine whether a certificate of appealability should issue.

Nonetheless, in the event that such a determination may be required, the court finds that Padilla is not entitled to a certificate of appealability. The court may issue a certificate of appealability only if

the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requires the petitioner to “demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, the court has concluded that Padilla’s petition must be dismissed as moot. The court is persuaded that reasonable jurists would not find its conclusion debatable or wrong. Padilla 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. Padilla’s petition for a writ of habeas corpus is treated as a petition pursuant to 28 U.S.C. § 2241, and so treated, 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: January 22, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE