

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GEORGE WASHINGTON WILLIAMS,

Petitioner,

vs.

CIVIL ACTION
No. 08-3304-RDR

C. CHESTER,

Respondent.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed pursuant to 28 U.S.C. § 2241. Petitioner proceeds pro se in this action and challenges his categorical exclusion from early release after completion of the Residential Drug Abuse Treatment Program due to his conviction for a firearms offense.

The respondent filed an Answer and Return, arguing the petition should be dismissed due to petitioner's failure to exhaust administrative remedies before commencing this action and asserting the petitioner's exclusion was a proper exercise of discretion by the Director of the BOP and that there had been no violation of the Administrative Procedures Act during the promulgation of the BOP rule excluding those convicted of firearms offenses from early release.

Because it appears the petitioner has been released from confinement,¹ the court is considering the dismissal of this matter on the ground of mootness.

"A habeas corpus petition is moot when it no longer presents a case or controversy under Article III, § 2, of the Constitution." *Aragon v. Shanks*, 144 F.3d 690, 691 (10th Cir.1998)(citing *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)).

"An issue becomes moot when it becomes impossible for the court to grant 'any effectual relief whatsoever' on that issue to a prevailing party." *United States v. Hahn*, 359 F.3d 1315, 1323 (10th Cir. 2004)(quoting *Smith v. Plati*, 258 F.3d 1167, 1179 (10th Cir. 2001)).

Here, because petitioner has been released from custody, it appears he has received the remedy he sought in this matter, and the court could grant no additional relief. *See, e.g., Dodd v. Craig*, 2010 WL 4918896 (S.D.W.Va. 2010)(dismissing as moot § 2241 challenge to denial of placement in RDAP where prisoner had been released from confinement) and *Gray-bey v. Cruz*, 2009 WL 2982927 (D.Minn. 2009)(dismissing as moot § 2241 challenge to determination that prisoner was ineligible for early release

¹

See attached Inmate Locator record from www.bop.gov/iloc2, showing petitioner's release date of June 1, 2010.

following completion of RDAP as prisoner had been released)².

IT IS, THEREFORE, BY THE COURT ORDERED petitioner is granted to and including January 31, 2011, to show cause why this matter should not be dismissed as moot. The failure to file a timely response may result in the dismissal of this matter without additional prior notice to the petitioner.

Copies of this order shall be transmitted to the parties.

IT IS SO ORDERED.

DATED: This 3d day of January, 2011, at Topeka, Kansas.

S/ Richard D. Rogers
RICHARD D. ROGERS
United States District Judge

²Copies of these unpublished orders are attached.