

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JEFFERY L. THOMPSON,

Petitioner,

v.

STATE OF WISCONSIN,

Respondent.

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ORDER

12-cv-348-wmc

Jeffery L. Thompson filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, claiming that his parole revoked without due process of law. Thompson seeks immediate release from prison because: (1) the state lacked jurisdiction to revoke his parole; (2) he was denied the right to call witnesses at his revocation hearing; and (3) he was denied effective assistance of counsel on appeal from that proceeding. Having been advised that Thompson was released from custody, the court dismissed his federal habeas petition as moot on April 9, 2013. Thompson subsequently filed a motion for reconsideration (dkt. # 5), which will be construed as one seeking to alter or amend the judgment under Fed. R. Civ. P. 59(e) and denied.

To prevail on a motion under Rule 59(e), a petitioner must identify an error of law that merits reconsideration of the judgment. *See Obriecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008); *Sigsworth v. City of Aurora, Ill.*, 487 F.3d 506, 511-12 (7th Cir. 2007). Thompson contends that his petition was erroneously dismissed as moot, not because remains in prison, but because he remains subject to an extended period of supervised release and, therefore, remains “in custody.”

Thompson misunderstands the reason his petition was rendered moot. Whether a petitioner is “in custody” or not pertains to the availability of habeas corpus review. In that respect, the federal habeas corpus statutes confer jurisdiction to entertain petitions for habeas corpus relief only from persons who are “*in custody* in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3) (emphasis added); *see also* 28 U.S.C. § 2254(a). Accordingly, a habeas petitioner who challenges his underlying conviction continues to meet the custody requirement even after he is released on parole. *See Jones v. Cunningham*, 371 U.S. 236, 239 (1963).

The issue whether a prisoner was “in custody” at the time he filed his petition is separate from whether a case or controversy exists under Article III. *See Port v. Heard*, 764 F.2d 423, 426 (5th Cir. 1985) (explaining that the “in custody” requirement for habeas review is “analytically distinct” from the case-or-controversy requirement found in Article III). Here, Thompson’s challenge was to the termination of his parole status itself, which having now been released is no longer an actionable “case or controversy” for purposes of Article III, § 2, of the United States Constitution. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998). In other words, once Thompson was released from the period of re-incarceration imposed as the result of his parole revocation, the consequences of his state revocation could not be “undone” by this court. *See id.* at 8. Thus, the fact that Thompson remains on extended supervision does not alter the conclusion that his petition challenging a previous revocation no longer presents a concrete and continuing injury or “collateral consequence” that satisfies Article III. *See id.* at 7-8, 14-18; *Lane v. Williams*, 455 U.S. 624, 632-33 (1982); *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968).

To the extent that Thompson alleges that he is entitled to monetary or declaratory relief regarding the propriety of his revocation proceeding, his claim is precluded by the rule in *Heck v. Humphrey*, 512 U.S. 477 (1994), which bars any claim that would necessarily invalidate a term of confinement imposed by a legal process, such as a parole board hearing. See *Edwards v. Balisok*, 520 U.S. 641, 645 (1997); *Snodderly v. R.U.F.F. Drug Enforcement Task Force*, 239 F.3d 892, 899-900 (7th Cir. 2001); *Antonelli v. Foster*, 104 F.3d 899, 900-01 (7th Cir. 1997).

Because Thompson does not allege that he continues to suffer collateral consequences from the challenged parole revocation, he fails to show that his petition was dismissed in error or that he is entitled to relief under Fed. R. Civ. P. 59(e).

ORDER

IT IS ORDERED that petitioner Jeffery L. Thompson's motion for reconsideration (Dkt. # 5) is DENIED.

Entered this 2nd day of May, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge