FILED
United States Court of Appeals
Tenth Circuit

March 31, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

DONALD EARL BRUNNER,

Petitioner - Appellant,

v.

WYOMING DEPARTMENT OF CORRECTIONS; DANIEL SHANNON, Wyoming Department of Corrections Director, in his official capacity; WYOMING ATTORNEY GENERAL,

Respondents - Appellees.

No. 22-8055
(D.C. No. 2:22-CV-00020-ABJ)
(D. Wyo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY[*]

Before **MORITZ**, **EID**, and **ROSSMAN**, Circuit Judges.

While confined in the Wyoming Department of Corrections, Donald Earl Brunner sought habeas relief under 28 U.S.C. § 2241.[1] He argued that the Department of Corrections improperly added time to his sentence. And so he requested credit against

[*] This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] Brunner's habeas petition also included a claim under 28 U.S.C. § 2254. The district court dismissed that claim, and Brunner has abandoned it.

his sentence and release. The district court dismissed the claim, and Brunner now seeks a certificate of appealability (COA).[2]

After Brunner filed his brief, however, he completed his sentence. At our request, the parties have addressed whether Brunner's release made this case moot. "Mootness is a threshold issue because the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction." *McClendon v. City of Albuquerque*, 100 F.3d 863, 867 (10th Cir. 1996). A case is moot if the "plaintiff no longer suffers actual injury that can be redressed by a favorable judicial decision." *Ind v. Colo. Dep't of Corr.*, 801 F.3d 1209, 1213 (10th Cir. 2015) (internal quotation marks omitted).

This matter is moot. Brunner sought release, and he has been released. For that reason, he no longer suffers a redressable injury. He doesn't dispute that we cannot grant relief affecting his sentence. Nor does he claim that we could redress some collateral consequence of his sentence's execution. *Cf. Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (recognizing that a habeas petitioner's release will not moot a case if a collateral consequence remains). He instead argues that the case remains live because he should receive damages. But a favorable decision here could not yield that relief, for damages are not an available remedy in habeas. *See Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973).

[2] We construe Brunner's notice of appeal as a request for a certificate of appealability. *See* Fed. R. App. P. 22(b)(2). Because he represents himself, we construe his filings liberally. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Given that this matter is moot, what (if anything) should happen to the district court's judgment on the § 2241 claim? Neither party has addressed that question. When a case becomes moot through happenstance while pending before us, we will typically vacate the district court's judgment and remand with directions to dismiss. *See United States v. Munsingwear, Inc.*, 340 U.S. 36, 39–40 (1950). We have followed this procedure in habeas cases. *See Boyce v. Ashcroft*, 268 F.3d 953, 955 (10th Cir. 2001). And we see no reason not to follow it here. *See Miller v. Glanz*, 311 F. App'x 608, 611 (10th Cir. 2009) ("If the absence of jurisdiction does not deprive the appellate court of the power to vacate the district court's judgment and direct dismissal in [a moot appeal], it should not in [a moot COA request].").[3]

* * *

We grant Brunner's motion to supplement his brief. We deny as moot his request for a certificate of appealability and dismiss this matter. We vacate the part of the district court's judgment dismissing Brunner's § 2241 claim on the merits. And we remand with directions to dismiss the § 2241 claim without prejudice.

Entered for the Court

Nancy L. Moritz
Circuit Judge

[3] We cite this unpublished case for its persuasive value. *See* 10th Cir. R. 32.1(A).