

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4887
Conference Calendar

CHU KONG YIN,

Petitioner-Appellant,

versus

WARDEN, FEDERAL CORRECTIONAL
INSTITUTION AT OAKDALE,

Respondent-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 92-CV-1938
- - - - -
(December 15, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

The habeas petition in this case was dismissed for mootness because the petitioner was no longer serving his sentence. "Courts have occasionally framed in 'mootness' terms what in reality have been decisions that particular habeas petitioners could not satisfy the 'in custody' requirement [of federal habeas corpus statutes]." Escobedo v. Estelle, 655 F.2d 613, 615 n.5 (5th Cir. 1981). Mootness and the "in custody" requirement of

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

the federal habeas corpus statutes are distinct inquiries. Id. at 614 n.1.

A petitioner who is in custody pursuant to a conviction when he filed his petition satisfies the "in custody" requirement even though he is released prior to the completion of the litigation. Thompson v. Collins, 981 F.2d 259, 261 (5th Cir. 1993). Yin was in the custody of the warden at FCI-Oakdale at the time he filed this petition. Thus, his release pursuant to the Immigration and Naturalization Service (INS) detainer does not affect the "in custody" requirement of § 2241.

A habeas petitioner's attack on a conviction pursuant to which he was in custody when he filed his petition is not made moot by the fact that he was released while his habeas petition was still pending. Escobedo, 655 F.2d at 615. "The issue of mootness in a habeas corpus proceeding turns on the substantiality of any present 'collateral consequences' that may stem from the alleged illegal detention." Maggard v. Florida Parole Commission, 616 F.2d 890, 891 (5th Cir.), cert. denied, 449 U.S. 960 (1980)(citation omitted).

"Collateral consequences" are the disabilities or burdens which may flow from a conviction that give a petitioner a substantial stake in the judgment of conviction which survive the satisfaction of the sentence. Escobedo, 655 F.2d at 615. Examples include deportation and its ambient consequences. See Fiswick v. United States, 329 U.S. 211, 221, 67 S.Ct. 224, 91 L.Ed.2d 196 (1946); Umanzor v. Lambert, 782 F.2d 1299, 1301 (5th Cir. 1986).

Yin's petition challenges the duration, rather than the fact, of his confinement. As noted by the magistrate judge, although the INS detainer on Yin is, more than likely, a collateral consequence of his criminal conviction, the detainer is not a collateral consequence of the duration of Yin's detention for the fraud conviction. If Yin had been given credit for the time he spent at the halfway house, he would have still been subject to the detainer upon completion of his sentence. Yin's petition is moot because the extended period of his detention will not result in adverse collateral consequences. See Maggard, 616 F.2d at 891.

Yin argues that his petition is not moot "because of collateral consequences[;]" however, he does not indicate what collateral consequences he believes exist. He also argues that his petition is meritorious because of possible future adverse consequences. The mere possibility of future consequences is too speculative to give rise to a case or controversy. Bailey v. Southerland, 821 F.2d 277, 279 (5th Cir. 1987).

Yin also argues that the district court denied him Due Process and access to the courts by failing to grant him a hearing before dismissing his petition. "To receive a federal evidentiary hearing, the burden is on the habeas corpus petitioner to allege facts which, if proved, would entitle him to relief." Ellis v. Lynaugh, 873 F.2d 830, 840 (5th Cir.), cert. denied, 493 U.S. 970 (1989). Yin has not met this burden; therefore, the district court did not err by dismissing his

petition as moot without granting an evidentiary hearing. The judgment of the district court is AFFIRMED.