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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IVAN VON STAICH,

Petitioner - Appellant,

v.

BEN CURRY, Warden,

Respondent - Appellee.

No. 08-16792

D.C. No. 3:07-cv- 04647-PJH

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Ivan Von Staich, a California state prisoner, appeals pro se the dismissal of his 28 U.S.C. § 2254 habeas corpus petition challenging the failure of the Board of Parole Hearings to hold a parole suitability hearing by November 2006. He

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

contends that the district court erred in concluding that his due process claim was moot because he received a hearing and was denied parole in May 2007. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

Von Staich argues that his claim is not moot because, due to the six-month delay in his hearing, any subsequent parole hearings will be at least six months overdue. He also argues that the alleged due process violation is capable of repetition. *See Sherman v. United States Parole Comm'n*, 502 F.3d 869, 871 (9th Cir. 2007) (applying exception to mootness in habeas case).

As stated by the district court, Von Staich already has received the only relief to which he might be entitled if his due process claim were successful. The exception to mootness for matters that are capable of repetition, yet evading review, does not apply in these circumstances. Von Staich's detention while awaiting a parole hearing is not "by nature temporary and [unlikely] to persist long enough for the completion of appellate review." *Sherman*, 502 F.3d at 872 (quotation omitted). We therefore affirm the district court's conclusion that no case or controversy remains. *See Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005).

AFFIRMED.