

OCT 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREGG LEON CRAMPTON,

Petitioner - Appellant,

v.

J. E. THOMAS,

Respondent - Appellee.

No. 09-35645

D.C. No. 3:07-cv-01883-BR

ORDER*

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Submitted October 5, 2010**
Portland, Oregon

Before: TASHIMA, PAEZ and CLIFTON, Circuit Judges.

Gregg Leon Crampton moves to dismiss as moot his petition for writ of habeas corpus under 28 U.S.C. § 2241 and his appeal of the district court's denial of the same, and to vacate the district court's order pursuant to 28 U.S.C. § 2106.

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

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

The government agrees to the dismissal but argues that the district court's order should not be vacated.

It is undisputed that because Crampton was resentenced on February 2, 2010 to a consecutive sentence of 96 months, this appeal and the underlying petition are moot. Furthermore, because Crampton's petition has become moot by the "happenstance" of a separate court judgment involving distinct legal issues not raised in this appeal, vacatur is appropriate. *See Alvarez v. Smith*, ___ U.S. ___, 130 S. Ct. 576, 581-83 (2009). We grant Crampton's motion to dismiss, vacate the district court's order of June 26, 2009, and remand with instructions to dismiss the case as moot.

VACATED AND REMANDED.