

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY JACOB PARKER,

Petitioner-Appellant,

v.

BRIAN BELLEQUE,

Respondent-Appellee.

No. 08-35776

D.C. No. 3:06-cv-00732-MA

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Malcolm F. Marsh, District Judge, Presiding

Argued and Submitted November 2, 2010
Portland, Oregon

Before: W. FLETCHER and FISHER, Circuit Judges, and BURY, District Judge.**

Henry Jacob Parker appeals the district court’s dismissal of his petition for writ of habeas corpus as moot. We reverse and remand.

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

** The Honorable David C. Bury, United States District Judge for the District of Arizona, sitting by designation.

Parker argues that because he is currently subject to parole conditions, he is suffering an actual injury and thus his habeas petition is not moot. We agree. Although a habeas petition may be mooted by the prisoner's outright release, *see Lane v. Williams*, 455 U.S. 624 (1982), prisoners released on parole "have not completed their sentences, they are serving them." *United States v. Betts*, 511 F.3d 872, 876 (9th Cir. 2007). Because Parker is still serving the parole portion of his sentence, his petition is not moot.

Because the district court dismissed Parker's petition on the basis of mootness, it did not evaluate his constitutional challenges to the Parole Board's 2005 parole release determination. This matter is therefore remanded for consideration of the merits of Parker's constitutional claims.

REVERSED AND REMANDED.