

DEC 30 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>PHILLIP L. HARMON,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>DEP'T OF MENTAL HEALTH,</p> <p>Respondent - Appellee.</p>

No. 10-56712

D.C. No. 2:09-cv-00911-AHS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Alicemarie H. Stotler, District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

Phillip L. Harmon appeals pro se from the district court's order dismissing for lack of jurisdiction his habeas petition under 28 U.S.C. § 2254 challenging his civil commitment under California's Sexually Violent Predators Act ("SVPA").

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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 district court correctly determined that it lacked subject matter jurisdiction over Harmon’s petition because, at the time of his federal filing in this case, Harmon was no longer “in custody pursuant to the judgment of a State court” within the meaning of 28 U.S.C. § 2254(a). *See Maleng v. Cook*, 490 U.S. 488, 490-94 (1989) (per curiam). Because the district court lacked jurisdiction over the petition as a statutory matter, we need not reach the issue of whether the petition was moot. *See United States v. Sandoval-Lopez*, 122 F.3d 797, 802 n.9 (9th Cir. 1997) (“We avoid constitutional questions when an alternative basis for disposing of the case presents itself.”).

AFFIRMED.