

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Anthony Lafauci, :
Petitioner, :
 :
v. :
 : Case No. 3:04cv132 (JBA)
New England Interstate : PRISONER
Corrections Compact, :
Commissioner Theresa A. Lantz, :
and Major Lynn Milling, :
Respondents. :

RULING ON MOTIONS TO DISMISS [DOCS. ## 14, 23] AND
FOR MISCELLANEOUS RELIEF [DOCS. ## 12, 18-20, 25]

Petitioner Anthony Lafauci filed his Amended Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 [Doc. # 5] challenging Connecticut prison officials' refusal to lower his classification level to enable him to participate in a sex offender program. Respondents have filed a Motion to Dismiss on the ground that the petitioner failed to exhaust available state court remedies [Doc. # 14], as well as an Amended Motion to Dismiss [Doc. # 23] on the ground that the relief sought in Lafauci's Amended Application is now moot. For the reasons that follow, the Amended Motion to Dismiss is granted and the Motion to Dismiss denied as moot. Petitioner's pending motions for miscellaneous relief [Docs. ## 12, 18-20, 25] are also accordingly denied as moot.

I. Factual Background

For the purposes of deciding this motion, the Court assumes

that the following allegations, taken from the Amended Application and exhibits to respondents' motions to dismiss, are true. In 1995, in Rockingham Superior Court in New Hampshire, petitioner was convicted of several counts of sexual assault and was sentenced to three 3½-7 year terms of imprisonment. As part of his sentences, it was also ordered that petitioner would be required to complete a sexual offender program prior to being considered for parole.

In August 2000, the New Hampshire Department of Corrections transferred petitioner pursuant to the Interstate Corrections Compact to the State of Connecticut Department of Corrections to serve the remainder of his sentence. Connecticut prison officials refused to lower petitioner's classification level to enable him to participate in a sex offender program, a prerequisite to his obtaining parole. On January 9, 2002, the New Hampshire Parole Board denied petitioner's request to be voted to parole because he had not completed the program. Officials from the New Hampshire Department of Corrections also refused to return the petitioner to a prison facility in New Hampshire where he could complete such a program.

On June 28, 2005, petitioner clarified the relief requested (see [Doc. # 10]): he seeks injunctive relief in the form of an order transferring him back to the New Hampshire Department of Corrections, an order that prison officials hold a hearing to

determine whether the conditions of confinement in Connecticut are the same as the conditions that petitioner would experience if he were incarcerated in New Hampshire, and an order directing the warden at Osborn Correctional Institution in Somers, Connecticut, to permit the petitioner to visit the law library every day (id. at 6, Prayer for Relief).

II. Standard

There must be an actual case or controversy pursuant to Article III of the United States Constitution in order for a court to exercise subject matter jurisdiction. See Vermont Right to Life Comm., Inc. v. Sorrell, 221 F.3d 376, 381-82 (2d Cir. 2000). Under Rule 12(b)(1), the Court must determine whether it has jurisdiction over the subject matter of petitioner's Amended Application. The party asserting jurisdiction bears the burden of establishing that the Court has subject matter jurisdiction. See Aurecchione v. Schoolman Transp. Sys., Inc., 426 F.3d 635, 638 (2d Cir. 2005). When considering a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, the court "accept[s] as true all material factual allegations in the complaint." Shipping Fin. Serv. Corp. v. Drakos, 140 F.3d 129, 131 (2d Cir. 1998) (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). In reviewing such a motion, the court "may resolve the disputed jurisdictional fact issues by reference to evidence outside the pleadings, such as affidavits." Zappia Middle East

Constr. Co. Ltd. v. Emirate of Abu Dhabi, 215 F.3d 247, 253 (2d Cir. 2000).

III. Discussion

At the time he filed his Amended Application for Writ of Habeas Corpus, Mr. Lafauci was incarcerated at the Cheshire Correctional Institution in Cheshire, Connecticut. He is now incarcerated in the New Hampshire Department of Corrections (see Deveau Aff. [Doc. # 23-2] ¶ 3). Moreover, Lafauci has provided evidence that he was eligible to participate in a sex offender program in late November 2004, when Connecticut and New Hampshire prison officials agreed to lower the petitioner's classification level and transferred him to Osborn Correctional Institution in Somers, Connecticut. He began a sex offender program at Osborn in January 2005 and completed Track I of the Program in December 2005 (see Doc. # 16 at 14, 21).

The Second Circuit has held that an inmate's request for injunctive relief against correctional staff or conditions of confinement at a particular correctional institution becomes moot when the inmate is discharged or transferred to a different correctional institution. See Mawhinney v. Henderson, 542 F.2d 1, 2 (2d Cir. 1976). See also Martin-Trigona v. Shiff, 702 F.2d 380, 386 (2d Cir. 1983) ("The hallmark of a moot case or controversy is that the relief sought can no longer be given or is no longer needed"). Because Mr. Lafauci has been permanently

removed from the State of Connecticut Department of Corrections and returned to his home jurisdiction in a New Hampshire Department of Corrections facility, his requests for transfer to New Hampshire and concerning the conditions of his confinement at Connecticut Department of Corrections facilities are moot and the court lacks subject matter jurisdiction over this action because no case or controversy is present. See Mawhinney, 542 F.2d at 2 (“In order for a federal court to exercise its judicial power, an actual case or controversy must exist at each stage of review and not only at the time the complaint is filed.”) (citing Steffel v. Thompson, 415 U.S. 452, 459 n. 10 (1974)).

Accordingly, respondents’ Amended Motion to Dismiss [Doc. #23] is GRANTED, respondents’ initial Motion to Dismiss [Doc. # 14] is DENIED as moot, and the Amended Application for Writ of Habeas Corpus [Doc. # 5] is DISMISSED as moot. Petitioner’s motions for relief [Docs. ## 12, 18-20] are also DENIED as moot. Petitioner’s motion concerning his legal documents and other property [Doc. # 25] is also DENIED as moot in light of the attestation of Lynn Milling, the Interstate Compact Supervisor for the Connecticut Department of Corrections, that “all of [Mr. Lafauci’s] property and funds in his inmate account were sent to New Hampshire State Prison” and that “no money was deducted for any costs related to sending his property back to New Hampshire” (see Milling Aff. [Doc. # 26] ¶ 3).

