

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

TODD GIFFEN,

Petitioner-Appellant,

v.

STATE OF OREGON, ATTORNEY
GENERAL OF THE STATE OF
OREGON ELLEN ROSENBLUM,
AND ALEX GARDNER, District
Attorney for the State of Oregon,

Defendant-Respondent.

Lane County Circuit Court
Case No. 161403534

CA A157118

APPELLANT'S AMENDED OPENING BRIEF

Appeal from the Judgment of the Circuit Court
for Lane County
Honorable Charles M. Zennache, Circuit Judge

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Filed 12/14

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APPELLANT'S OPENING BRIEF

STATEMENT OF THE CASE

Nature of the Proceeding

Appellant, plaintiff below and hereafter, challenges a judgment dismissing his petition for a writ of habeas corpus. Plaintiff initiated the proceedings by filing a *pro se* petition for a writ of habeas corpus. A copy of the petition is attached at ER-1-3.

Nature of the Judgment

The trial court, on its own motion, dismissed the petition for a writ of habeas corpus as moot. A copy of the judgment is attached at ER-4.

Jurisdiction

This court has jurisdiction under ORS 34.710.

Notice of Appeal

Judgment was entered in the Lane County Circuit Court on June 4, 2014. Petitioner timely filed Notice of Appeal on June 19, 2014.

Question Presented

Plaintiff had pending criminal charges and sought habeas corpus relief, after which the underlying criminal case was dismissed. Did the trial court err when it

subsequently dismissed plaintiff's habeas corpus petition as moot, even though plaintiff had also sought habeas corpus relief for other actions by state actors that allegedly violated various constitutional rights?

Summary of Argument

A case is not moot if a ruling in the plaintiff's favor will have a practical effect on his rights. Here, plaintiff alleged various actions by state actors that violate his constitutional rights, and those actions appear to be separate and distinct from the underlying criminal proceedings. That is, plaintiff sought relief from both the conditions of his treatment pursuant to the criminal case, as well as other actions by the state that appeared to be independent of the case, such as unlawful surveillance and searches. Thus, even though the criminal case was dismissed, that does not resolve the issue of the other actions by state actors that violate plaintiff's constitutional rights. Therefore, the habeas corpus action is not moot.

Summary of Facts

I. Standard of Review

This court reviews a trial court ruling granting the state's motion to deny issuance of a writ under ORS 34.680 (1) like a dismissal "under ORCP 21 A(8) for failure to state a claim." *Rivas v. Persson*, 256 Or App 829, 830, 304 P3d 765 (2013). Under that standard, this court "review[s] the allegations in the petition

and related inferences in the light most favorable to [the] plaintiff to determine whether the petition alleges a legally sufficient claim.” *Id.*

II. Facts Alleged in the Petition

In the petition for a writ of habeas corpus filed on February 20, 2014, plaintiff alleged that he is “illegal [*sic*] detained and held by the Lane County Circuit Court * * * pre-trial on a charge of assault 4 (under court case number 22-13-18198).” ER-1. Plaintiff alleged that he is “in a custody program of the Lane County Jail, and am experiencing numerous civil rights violations.” ER-1.

Plaintiff also alleged other deprivations of his liberty. Plaintiff alleged that he has “sustained serious fatal physical/brain injury from spy games played by the law enforcement in the state from the use of directed energy weapons and military technology on my brain and body[.]” ER-1. Plaintiff also alleged as follows:

“I allege that at this moment, I am also being stalked and followed on the streets by undercover agents who work with the state to coordinate these abuses, and they are using a number of illegal surveillance tactics on me, trying to harass, and entrap me in the legal system. This violates my 4th amendment rights under the US constitution to be free from warrantless surveillance and illegal searches/seizures by government agents. The abuse I have experienced constitutes cruel and unusual punishment under the 8th amendment, and it also violates my 14th amendment rights to due process, including violating the liberty interest of this right. They also seek to sabotage my legal case, by abusing me and withholding services another violation of the 14th amendment/due process clause, which guarantees a fair trial.”

ER-1.

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Plaintiff concluded his petition, “I am being denied significant liberty and the court should order the granting of my Habeas Corpus and order such relief as may be necessary.” ER-3.

ASSIGNMENT OF ERROR

The trial court erred when it denied issuance of the writ of habeas corpus.

Preservation of Error

After plaintiff filed the petition, and before the court appointed counsel, the court dismissed the petition on its own motion:

“FINDINGS OF FACT:

“1. Petitioner filed a Petition for Writ of Habeas Corpus on February 20, 2014 regarding the terms of his pretrial detention in Lane County Circuit Court Case Number 22-13-18198.

“2. Lane County Circuit Court Case Number 22-13-18198, was dismissed on the State of Oregon’s motion on March 5, 2014.

“3. This case was assigned to me on May 20, 2014.

“4. A review of OJIN reflects that Petitioner does not have any charges currently pending against him in this court.

“IT IS HEREBY ORDERED AND ADJUDGED that the above-entitled case is dismissed in its entirety because it is moot.”

ER-4.

Because the court entered the judgment without prior notice to the parties, the rules of preservation do not apply to the error. *See Walker v. State*, 26 Or App 697, 699-700, 302 P3d 469, *rev den*, 354 Or 62 (2013) (explaining that the principles of preservation do not apply to an error that appears for the first time in the judgment). Alternatively, the trial court committed plain error and this court should exercise its discretion to reverse the error under ORAP 5.45. *Ailes v. Portland Meadows, Inc.*, 312 Or 376, 382 n 6, 823 P2d 956 (1991).

Standard of Review

This court “review[s] the allegations in the petition and related inferences in the light most favorable to [the] plaintiff to determine whether the petition alleges a legally sufficient claim.” *Rivas*, 256 Or App at 830. Whether a case is moot presents a question of law. *See Brumnett v. PSRB*, 315 Or 402, 405, 848 P2d 1194 (1993) (applying standard).

Argument

Plaintiff filed a petition for a writ of habeas corpus to seek relief from the pretrial conditions from a criminal case, as well as other alleged acts by state actors against him. The trial court dismissed plaintiff’s petition as moot upon finding that the underlying criminal case had been dismissed. The trial court erred, however,

because the dismissal of the underlying criminal case did not render moot plaintiff's allegations that the state actors were still "restraining" plaintiff's "liberty" for purposes of habeas corpus. For example, the trial court could grant plaintiff relief by issuing an order that prohibits state actors from following or monitoring him, as plaintiff alleged in the petition.

A case presents a justiciable controversy when "the court's decision in the matter will have some practical effect on the rights of the parties to the controversy." *Brumnett*, 315 Or at 405. A case is not moot if a party continues to suffer "collateral consequences" from the alleged unlawful restraint of liberty. *Barnes v. Thompson*, 159 Or App 383, 386, 977 P2d 431 (1999). *See also Jones v. Thompson*, 156 Or App 226, 229, 968 P2d 380 (1998) (noting the "general principle that a case becomes moot when, because of a change in circumstances, a decision would resolve merely an abstract question without practical effect").

In this case, the trial court dismissed the habeas corpus petition as moot because plaintiff "does not have any charges currently pending against him in this court." ER-4. The premise of the court's conclusion is that plaintiff's petition for a writ of habeas corpus addressed only "the terms of his pretrial detention in Lane County Circuit Court Case Number 22-13-18198." ER-4. The premise of the court's conclusion is flawed, because plaintiff also addressed other deprivations of

liberty, which, according to the plaintiff, are ongoing and independent of the criminal case. To determine whether plaintiff's other allegations constitute deprivations of liberty that fall within the ambit of the habeas corpus statutory scheme requires this court to interpret that scheme.

ORS 34.310 describes the purpose of the writ of habeas corpus and provides, in part, "Every person imprisoned or *otherwise restrained of liberty* * * * may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint, and if illegal, to be delivered therefrom." (Emphasis added.) The issue in this case is whether plaintiff pleaded facts to support a claim that he is "otherwise restrained of liberty" for purposes of ORS 34.310. To interpret a statute, this court looks to the text and context of the statute, including any helpful legislative history offered by the parties. *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993).

The plain text of the statute indicates that habeas corpus can address restraints of liberty outside the context of an ongoing criminal case. "Otherwise" can be defined as follows:

"**1** : in a different way or manner : DIFFERENTLY * * * **2** : in different circumstances : under other conditions * * * **3** : in other respects * * *"

Webster's Third New Int'l Dictionary 1598 (unabridged ed 2002). When read in context of the habeas corpus statute, ORS 34.310 applies to a person who is "imprisoned" or *in a different way* "restrained or liberty," and allows that person "to inquire into the cause of such imprisonment or restraint."

Plaintiff's plain-text reading is consistent with how the Oregon Supreme Court has interpreted the statute:

"That being 'restrained of his liberty' is not limited to being 'imprisoned' appears on the face of the statute. Doubtless the term would include any physical restraint, for instance an allegation that one is illegally kept chained, or in a straitjacket, or blindfolded, though not confined in any closed space. One can be no less restrained by means of the deliberate threat or use of violence to one's person. Upon such an allegation, the issue is not whether the person on whose behalf the petition is filed is 'restrained of his liberty' but whether the restraint is illegal."

Penrod v. Cupp, 283 Or 21, 24, 581 P2d 934 (1978). Similarly, the Supreme Court has interpreted the phrase to apply to restraint outside the context of an active criminal case where charges are pending:

"The logical inference from the statute is that the kind of restraint to which reference is made is a physical restraint within the state of Oregon and within some county or judicial district of the state. A person may be subject to physical restraint when under arrest by a police officer or by any other person, without being in prison, but such restraint differs in kind from that imposed by rule upon a parolee."

White v. Gladden, 209 Or 53, 60, 303 P2d 226 (1956). Therefore, the plain text of the statute supports plaintiff’s argument that habeas corpus applies to restraints of liberty other than mere confinement pursuant to an ongoing criminal case.

Plaintiff’s reading is also consistent with case law that has held that habeas corpus is available to challenge imprisonment as well as “collateral consequences” from a conviction. For instance, in *Baty v. Slater*, 164 Or App 779, 782, 995 P2d 1176 (2000), this court rejected the state’s argument that “habeas corpus relief is not available to an offender who has been released from custody,” instead concluding that “a habeas corpus petition is not moot if there are collateral consequences to resolution of the dispute that may result in plaintiff obtaining relief from a restraint of liberty.”

Oregon courts have held that a restraint of “liberty” for purposes of ORS 34.310 is a state action that violates a person’s constitutional rights. *See Dunn v. Hill*, 211 Or App 590, 603, 156 P3d 72 (2007) (“We conclude that plaintiff has adequately pleaded facts that, if true, would constitute the deprivation of a constitutional right requiring immediate judicial scrutiny.”). For instance, Oregon courts have recognized habeas corpus claims that are framed in terms of an allegation that the state is violating the constitutional right to be free from cruel and unusual punishment. *Billings v. Gates*, 323 Or 167, 180-181, 916 P2d 291

(1996) (“To state a cognizable claim for habeas corpus relief under Article I, section 16, a prisoner must allege that the prisoner has a serious medical need that has not been treated in a timely and proper manner and that prison officials have been deliberately indifferent to the prisoner’s serious medical needs.”). This court found that habeas corpus was the proper way to address an alleged violation of the Article I, section 13, proscription against treating an arrested person “with unnecessary rigor.” *Schafer v. Maass*, 122 Or App 518, 523, 858 P2d 474 (1993) (“In summary, the allegation that petitioner is being subjected to ‘ongoing and periodical assaults’ is an allegation that he is being deprived of the constitutional right to be free from unnecessary physical abuse.”). Habeas corpus also is the proper vehicle to address alleged violations of due process rights. *Bekins v. Cupp*, 274 Or 115, 117, 545 P2d 861 (1976) (holding that habeas petition was the proper procedure to challenge the placement of a prisoner in segregation, alleged to be a violation of due process rights); *Dunn*, 211 Or App at 598-605 (addressing the issue of whether the plaintiff had sufficiently alleged a deprivation of his due process right to “access to the courts”).

Under plaintiff’s reading of ORS 34.310, the question in this case is whether he sufficiently alleged that he was “restrained of liberty” by the state, meaning the state is violating his constitutional rights in a way that limits, or “restrains,” his

freedom. “[P]etitions should be construed liberally and not voided for mere technical defects.” *Bedell v. Schiedler*, 307 Or 562, 566, 770 P2d 909 (1989). As an example of how liberally allegations should be read, this court engaged in the following analysis in *Fox v. Zenon*:

“Taking as true his allegation that he has made several suicide attempts, we infer that he cannot control his suicidal impulses and that, at any time, he is likely to try again. Again taking his allegation as true that he has requested to see a psychiatrist on 15 to 20 occasions but that defendant has not provided him with any psychiatric or any psychological diagnosis or treatment, we infer from his allegations that defendant will continue to deny his requests to see a psychiatrist or be diagnosed or treated.”

106 Or App 37, 40-41, 806 P2d 166 (1991). In *Fox*, the court read the allegations liberally by taking statements of past actions to be read as alleging that the actions will recur in the future.

When read liberally, plaintiff’s petition indicates that the dismissal of the underlying criminal case has not rendered his case moot. Plaintiff alleged that he is “experiencing numerous civil rights violations.” ER-1. Plaintiff has experienced “abuses by the state, retaliations, and covert harassment and surveillance” by state actors. ER-1. Specifically, law enforcement officers have used “directed energy weapons and military technology” to cause plaintiff “serious fatal physical/brain injury” and “chronic traumatic encephalopathy.” ER-1. Under the reading standard applied in *Fox*, plaintiff is alleging that the state actors

who have been causing him unwarranted physical harm will continue to do so. That physical harm would constitute a restraint on plaintiff's liberty cognizable under ORS 34.310.

Plaintiff also alleged that his liberty was being restrained by violations of his Fourth, Eighth, and Fourteenth Amendment rights. ER-1. "[U]ndercover agents who work with the state to coordinate these abuses" against plaintiff "stalk[] and follow[]" plaintiff and employ "a number of illegal surveillance tactics on [plaintiff]." ER-1. Read liberally, plaintiff alleges that the state actors will continue to engage in "warrantless surveillance and illegal searches/seizures," violating plaintiff's Fourth Amendment rights. ER-1. Further, plaintiff alleges that "[t]he abuse [he] has experienced," which would include the physical injury caused by the state's "directed energy weapons and military technology," "constitutes cruel and unusual punishment under the Eighth amendment, and it also violates my Fourteenth amendment rights to due process, including violating the liberty interest of this right." ER-1.

Plaintiff has sufficiently alleged that he is unlawfully restrained of liberty. He has alleged that he is subjected to cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments, based on the deliberate use of weapons against him, causing him physical harm. Plaintiff has alleged that his liberty

against unlawful searches and seizures, in violation of the Fourth and Fourteenth Amendments, has been infringed by warrantless surveillance by state actors who are stalking and following him. Therefore, plaintiff's case is not moot because his petition contains cognizable claims that have not been resolved by the dismissal of criminal charges against him. *Cf. Anderson v. Britton*, 212 Or 1, 5, 318 P2d 291 (1957) (“[T]he function of habeas corpus cannot be defeated by a transfer of custody after a ruling in the trial court and pending appeal to this court. To hold otherwise would permit the jurisdiction of the court to be thwarted after it has once attached.”).

The trial court erred in dismissing plaintiff's petition for a writ of habeas corpus. This court should reverse the decision of the habeas trial court and remand for further proceedings. *See Bedell*, 307 Or at 570 (after holding that the trial court erred in granting the state's motion to dismiss a petition for a writ of habeas corpus, affording such a remedy).

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CONCLUSION

Plaintiff asks this court to reverse the judgment of the circuit court and to remand to the circuit court for further proceedings.

DATED December 2, 2014.

Respectfully Submitted,

/s/ Jed Peterson

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EXCERPT OF RECORD INDEX

Petition for Writ of Habeas CorpusER 1-3

JudgmentER 4

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2/17/2014.

Lane County Circuit Court, Habeas Corpus for State Petitioner

Todd Giffen,

Petitioner,

Vs.

State of Oregon, Attorney General of The State of Oregon Ellen Rosenblum

And Alex Gardner, District Attorney for the State of Oregon.

Respondents.

Petition for a Writ of Habeas Corpus

RECEIVED
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CIRCUIT COURT, LANE CO.

FILED
14 FEB 20 PM 2:03
Case 14-03334
CIRCUIT COURT OF OREGON
FOR LANE COUNTY
BY
Petition for
Writ of Habeas
Corpus

My name is Todd Giffen, and I am illegal detained and held by the Lane County Circuit Court in Lane County, Oregon. I am held pre-trial on a charge of assault 4 (under court case number 22-13-18198). I am in a custody program of the Lane County Jail, and am experiencing numerous civil rights violations. I am labeled by my psychological expert (Cathy Meadows, M.A., Clinical Psychology) a victim of "whistleblower retaliation" and have dealt with abuses by the state, retaliations, and covert harassment and surveillance by the police, sheriffs, and even jail clerks in the town I am from. There is a conspiracy of them working with the CIA and US Department of Justice illegally, and committing serious acts of abuse, and refusing to investigate it afterwards.

I have sustained serious fatal physical/brain injury from spy games played by the law enforcement in the state from the use of directed energy weapons and military technology on my brain and body, and have now acquired a diagnosis of "chronic traumatic encephalopathy" from my doctor (Dr. Stefan Harold, a neurologist in Portland), a diagnosis which the jail and Oregon State Hospital denied I had while in their custody, citing in reports that I had no sign of injury, in order to hide my condition and abuse. I dealt with violations of law while in custody, including torture, denials of medical care, deliberate indifference, verbal and physical abuse, and coercion. I have been assaulted while in custody, and staffers are desperately trying to hide their illegal ties to the CIA or the facilities participating in illegal surveillance or abuses.

I allege that at this moment, I am also being stalked and followed on the streets by undercover agents who work with the state to coordinate these abuses, and they are using a number of illegal surveillance tactics on me, trying to harass, and entrap me in the legal system. This violates my 4th amendment rights under the US constitution to be free from warrantless surveillance and illegal searches/seizures by government agents. The abuse I have experienced constitutes cruel and unusual punishment under the 8th amendment, and it also violates my 14th amendment rights to due process, including violating the liberty interest of this right. They also seek to sabotage my legal case, by abusing me and withholding services another violation of the 14th amendment/due process clause, which guarantees me a fair trial.

1 | Page

Call the obamasweapon.com hotline at 503-967-5202 to learn more about my case.

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2/17/2014.

The judges in Lane County are abusing me, and I am being denied effective counsel. I have noticed bizarre relationships between the attorneys and the courts in town, and asked the court for a change of venue or a change of counsel, to counsel out of the county because of conflicts of interest. The judges did not rule on my submitted motions, denied motion when my attorney submitted the request, and I believe it's an attempt to sabotage my case. My counsel himself has told me and my civil rights attorney Shawn Abrell in taped recordings that he will not protect me, that it's not his duty to protect me, and he is protecting the District Attorney William Warnisher, who I allege participated in these abuses. My attorney is refusing to hire expert witnesses, refusing to hire doctors, refusing to hire private investigators, and he's ignoring all my communication. I have provided him video evidence and audio evidence of my abuse, and he has refused to investigate for 2 solid months. I have requested that he file an injunction to stop the abuse, or to file a Writ of Mandamus or Writ of Habeas Corpus about my abuse on my behalf, to force the courts to take corrective action, and he refuses. I believe that he intends for me to falsely plead guilty to a crime I am not guilty of or go to trial without a defense because he refused to build my case (the only way to prove my innocence). This violates my right to counsel who actually works for me (ie is effective, and wants to help me) and right to compulsory process to find witnesses in my favor under the 5th, 6th, and 14th amendments, which guarantees me counsel for my defense in criminal cases, and due process rights to counsel and a fair trial.

The fact that the judges are prejudiced against me and trying to cover up the crime of local police also makes it unlikely that I could get a fair trial in Lane County, and there are potentially involved people all over the area.

An issue is at hand, of the covert abuses by the state, which if proven, and as easy as it is given the evidence I have provided, I would be acquitted because the State would be guilty of setting me up, inducing incidents that would have not occurred otherwise, and inducing incidents which I did not participate in willingly (the defense of the crime in my case is that I didn't act willfully, another person forced me into it, remotely abused me into it, and coerced/induced me into it. The state also hid evidence to prove my innocents, and has went to elaborate efforts to conceal my abuse to frame me and win convictions.).

I seek the protection of Habeas Corpus in Lane County only because statute may require it, even though there's a conflict of interest with the Lane County Circuit Court, and abuse by the Presiding Judge there, "Judge Rasmussen" and other judges, who have helped sabotage my release, are denying or not ruling on motions I file (including requests to change venue and new attorneys), won't appoint new counsel, and have on the record called my complaints a "conspiracy" while angrily denying my motion for out of county counsel. Judge Rasmussen has seen reports by my psychologist saying I have been getting abused by the state with covert harassment and surveillance (which she describes as whistleblower retaliation, saying I have no mental illness about it), and a transcript from a US Investigate Services/military employee who came forward as a whistleblower disclosing details about the governments technology used to attack me and her belief that I had been targeted by the State of Oregon / military during weapon/psych experimentation (transcript+audio: <http://www.oregonstatehospital.net/d/USIS.html>).

I called the Post Conviction Consortium and they informed me I could file a new Petition for Habeas Corpus and that I should request their appointment so we could investigate these matters and submit a

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2/17/2014.

revised petition if need be. The attorney's office assistant I spoke with is also familiar with my website and case, as I guess I'm quite the celebrity in Oregon (I run obamasweapon.com). I am asking these matters be investigated and protection granted before my trial date on 3/12/2014.

Custody program details: I am forced to check in at Lane County Jail daily, and they threaten me with illegal imprisonment including revocation of my release to the custody program. The Appeals court has held numerous times that people in custody programs pre-trial are eligible for Habeas Corpus, if that is an issue raised by the court, and I'm sure appointing counsel would help me clear this matter up.

More evidence is available on my website at this URL:

<http://www.oregonstatehospital.net/d/russelltice-nsarnmebl.html> (all about NSA warrantless surveillance with radar/space capability, with information by Dr. Robert Duncan, a DOD/CIA/US DOJ surveillance system architect saying Americans are being targeted nationally with it, tortured, and used as experimentation subjects with weaponry and microwave systems he helped design (his books for download + patents for it + interviews on Coast to Coast and Conspiracy Theory TV show are for viewing/download. He also interviewed 650 victims in 2006, which he believes are all credible. There are thousands of victims nation wide).

I am being denied significant liberty and the court should order the granting of my Habeas Corpus and order such relief as may be necessary.

Attached. 1 DVD, ex A.
Video/audio evidence.

DATED: 2/17/2014.

2/17/2014 Todd Giffen

Todd Giffen

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Springfield, OR 97477

503-967-5202

<http://www.obamasweapon.com/>

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FILED
AT 11:49 O'CLOCK A M

MAY 30 2014

Lane County, Oregon

IN THE CIRCUIT COURT
OF THE STATE OF OREGON FOR LANE COUNTY

TODD GIFFEN ,

Petitioner,

vs.

STATE OF OREGON, ATTORNEY
GENERAL OF THE STATE OF OREGON
ELLEN ROSENBLUM, AND ALEX
GARDNER, DISTRICT ATTORNEY FOR
THE STATE OF OREGON

Respondents.

Case No. 16-14-03534

GENERAL JUDGMENT
OF DISMISSAL

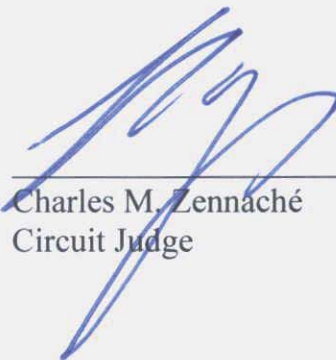
THIS MATTER came before the Court on its own motion, the Court having reviewed the file, and the Court being otherwise fully advised;

FINDINGS OF FACT:

1. Petitioner filed a Petition for Writ of Habeas Corpus on February 20, 2014 regarding the terms of his pretrial detention in Lane County Circuit Court Case Number 22-13-18198.
2. Lane County Circuit Court Case Number 22-13-18198, was dismissed on the State of Oregon's motion on March 5, 2014.
3. This case was assigned to me on May 20, 2014.
4. A review of OJIN reflects that Petitioner does not have any charges currently pending against him in this court.

IT IS HEREBY ORDERED AND ADJUDGED that the above-entitled case is dismissed in its entirety because it is moot.

DATED: May 30, 2014.



Charles M. Zennaché
Circuit Judge

JUN - 4 2014

CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)

Brief Length

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) that the word count of this brief (as described in ORAP 5.05(2)(a)) is 2,910 words.

Type Size

I certify that the size of the type in this brief is not smaller than 14 point font for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

NOTICE OF FILING AND PROOF OF SERVICE

I certify that I directed the original Appellant's Opening Brief to be filed with the Appellate Court Administrator, Appellate Courts Records section, 1163 State Street, Salem, OR 97301.

I further certify that, upon receipt of the confirmation email stating that the document has been accepted by the eFiling system, this Appellant's Opening Brief will be eServed pursuant to ORAP 16.45 (regarding electronic service on registered eFilers) on Anna Joyce, #013112, Solicitor General, attorney for Defendant-Respondent.

DATED December 2, 2014.

Respectfully Submitted,

/s/ Jed Peterson

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