IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL CUEVAS,	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO: H-06-3229
	§	
NATHANIEL QUARTERMAN,	§	
Director of the Texas Department	§	
of Criminal Justice - Correctional	§	
Institutions Division,	§	
Respondent.	§	

MEMORANDUM AND RECOMMENDATION

Petitioner Cuevas's application for writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2254 has been referred to this magistrate judge for a report and recommendation (Dkt. 4). The court recommends that petitioner's application be dismissed as moot.

Cuevas filed his federal petition on October 12, 2006 while incarcerated in the Jester III Unit of Fort Bend County, in the Southern District of Texas. Cuevas asserts that he was denied due process when he was not released to mandatory supervision on his mandatory release date, in effect being denied credit for his earned good time. On March 12, 2007, the court received a change of address notification from Cuevas (Dkt. 15) indicating that he was no longer residing in a TDCJ facility and presumably has been released to mandatory supervision or parole.[1]

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[1] Cuevas remains in "custody" for purposes of this court's habeas jurisdiction. Parole is a form of custody for purposes of habeas relief. *See Wottlin v, Fleming*, 136 F.3d 1032, 1034 n.1 (5th Cir. 1998).

Even if Cuevas was entitled to be released sooner than he was, the court cannot now order his release on an earlier date. Thus, a favorable decision by this court cannot redress Cuevas's alleged injury. Cuevas will not be subject to future adverse consequences based on the denial of good time credits, because an inmate forfeits all prior earned good time credits if mandatory release or parole is revoked. Therefore, Cuevas's claims became moot upon his release to mandatory supervision or parole. *Bailey v. Southerland*, 821 F.2d 277, 278-9 (5th Cir. 1987); *Guardiola v. Dretke*, Civil Action No. H-06-0341, 2006 WL 2248457 *3 (S.D. Tex. Aug. 4, 2006).

The court recommends that Cuevas's petition be dismissed as moot.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* Rule 8(b) of the Rules Governing Section 2254 Cases; 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72.

Signed at Houston, Texas on May 24, 2007.

Stephen Wm Smith
United States Magistrate Judge