

JAN 06 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL EUGENE ASHBY,

Petitioner - Appellant,

v.

JOSEPH LEHMAN; et al.,

Respondents - Appellees.

No. 07-35532

D.C. No. CV-03-05385-RJB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Submitted December 17, 2008**

Before: GOODWIN, TROTT, and RYMER, Circuit Judges.

Washington state prisoner Michael Eugene Ashby appeals pro se from the district court's judgment, upon remand, dismissing his 28 U.S.C. § 2254 petition.

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

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Although Ashby acknowledges that he has received the relief originally sought in his § 2254 petition, he contends that the district court erred by dismissing his petition as moot because it could have redressed two remaining injuries that resulted from his allegedly defective disciplinary proceedings.

We may affirm on any ground supported by the record. *See Buckley v. Terhune*, 441 F.3d 688, 694 (9th Cir. 2006). Even assuming that the entirety of Ashby's § 2254 petition was not moot, we conclude that dismissal was proper. Ashby lacks a constitutionally-protected liberty interest in earning early release time credits, and he therefore was not entitled to the protections of due process before he was deprived of his ability to earn the credits. *See Wolff v. McDonnell*, 418 U.S. 539, 557 (1974); *In re Galvez*, 79 Wash. App. 655, 657-58 (1995). Ashby's claim regarding expungement is not cognizable. *Cf. Bostic v. Carlson*, 884 F.2d 1267, 1269 (9th Cir. 1989).

Ashby's motion to supplement his reply brief is granted.

AFFIRMED.