

NOTICE
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2013 IL App (4th) 120398-U

NO. 4-12-0398

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 29, 2013
Carla Bender
4th District Appellate
Court, IL

BRIAN RICHARDSON,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
S.A. GODINEZ, Director of The Department of)	No. 11MR597
Corrections; and THE DEPARTMENT OF)	
CORRECTIONS,)	Honorable
Defendants-Appellees.)	Leo Zappa,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff's request for *mandamus* and declaratory relief is moot. Plaintiff completed his term of mandatory supervised release (MSR) and the Department of Corrections (Department) discharged him from his commitment. Sovereign immunity bars his claim for damages.

¶ 2 Plaintiff, Brian Richardson, appeals the trial court's order dismissing his petition seeking *mandamus* and declaratory relief against defendants, S.A. Godinez, director of the Department, and the Department. For the following reasons, we dismiss plaintiff's appeal as moot.

¶ 3 I. BACKGROUND

¶ 4 On November 9, 2011, plaintiff filed a petition seeking *mandamus* and declaratory relief. Plaintiff stated that on December 19, 2006, he pleaded guilty to aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (2006)) and child abduction (720 ILCS 5/10-5(b)(1) (2006)).

The trial court sentenced plaintiff to consecutive terms of seven years' imprisonment and two years' MSR for aggravated criminal sexual abuse, and three years' imprisonment and one year MSR for child abduction.

¶ 5 According to an affidavit of the chief records office supervisor for the Department, included in the appendix to defendants' brief, plaintiff completed his term of imprisonment pursuant to the December 2006 order and began serving his MSR term on April 27, 2011. Plaintiff served his MSR term in confinement at Lawrence Correctional Center because he did not have an approved host site.

¶ 6 On August 16, 2011, the trial court entered an order *nunc pro tunc* to correct plaintiff's sentences in this case to run concurrently.

¶ 7 In his November 2011 petition, plaintiff sought an order compelling his immediate release from the Department and damages for defendants' alleged failure to comply with the August 16, 2011, order. Plaintiff argued the additional time he spent serving consecutive sentences pursuant to the December 2006 sentencing order, and not concurrent sentences as ordered *nunc pro tunc* on August 16, 2011, should be credited to his two-year MSR term, resulting in his immediate release. Plaintiff asserted he completed his term of imprisonment "in early/mid 2010 [and] that any time he has served subsequent to that is 'in addition to' his prison sentence."

¶ 8 Plaintiff attached to his complaint, a copy of a document titled, "ILLINOIS DEPARTMENT OF CORRECTIONS MSR VIOLATORS SENTENCED UNDER 1978 LAW." The document identified plaintiff by name and offered a myriad of dates purportedly used to calculate plaintiff's "Projected Discharge/Out Date." Plaintiff attached the document to prove (1)

he had not lost any of his good-conduct credit and (2) defendants relied on "inapplicable federal law" in their calculations.

¶ 9 On December 5, 2011, defendants filed a motion to dismiss plaintiff's complaint pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)), and a memorandum in support of the motion. Defendants argued the complaint (1) must be dismissed because the trial court lacked subject-matter jurisdiction based on sovereign immunity and (2) failed to adequately plead a cause of action for *mandamus* or declaratory judgment.

¶ 10 Citing section 5-8-1(d) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-8-1(d) (West 2006)), defendants argued plaintiff must serve his two-year term of MSR "*in addition to*" his term of imprisonment. According to defendants, "[a]t the time of the circuit court's decision [on August 16, 2011], Petitioner was already serving MSR that had not been discharged." Defendants argued the trial court lacked authority to change the terms of plaintiff's MSR or to compel defendants to perform any ministerial duty that would entitle plaintiff to release. Defendants asserted plaintiff was serving "a legally imposed term of Mandatory Supervised Release (MSR)."

¶ 11 In a response to defendants' motion to dismiss, plaintiff asserted his "actual release date[, pursuant to the August 2011 order], was on or about November 17, 2009," and thus, assuming day-for-day good-conduct credit, he completed his two-year MSR term when the trial court entered its order on August 16, 2011, and was entitled to immediate release on that date. Plaintiff argued (1) immunity did not apply and (2) he "established a clear right to the relief he [] requested."

¶ 12 In a reply, defendants did not dispute plaintiff's release date, pursuant to the

August 2011 order, "should have been November 17, 2009." However, defendants argued plaintiff completed "the imprisonment portion of his sentence [pursuant to the December 2006 sentencing order) on April 27, 2011, before the Court corrected Petitioner's sentence." According to defendants: "Petitioner was already serving MSR as of the date of the Court's *nunc pro tunc* order. The Order could not reduce Petitioner's MSR term. Illinois Courts have held that courts have no authority to shorten a term of MSR."

¶ 13 On February 10, 2012, the trial court granted defendants' motion to dismiss, stating "Illinois courts do not have the authority to shorten a term of mandatory supervised release or by argument to determine a portion of a void sentence should be deemed mandatory supervised release time."

¶ 14 Plaintiff filed a motion to reconsider the trial court's dismissal of his *mandamus* and declaratory judgment complaint, which the trial court denied. On April 26, 2012, plaintiff filed a notice of appeal.

¶ 15 Plaintiff received day-for-day good-conduct credit while serving his MSR term in confinement. He completed his MSR term on April 27, 2012, and the Department discharged him from his commitment.

¶ 16 II. ANALYSIS

¶ 17 On appeal, plaintiff argues the trial court erred by dismissing his complaint because he stated a claim for *mandamus* and declaratory relief. In his complaint, plaintiff sought an order compelling his immediate release from the Department, and damages for defendants' alleged failure to comply with the August 8, 2011, order. Plaintiff represents in his brief filed on August 2, 2012, that he "continues to serve" his MSR term. According to the Department's

affidavit, included in the appendix to defendants' brief (see *PACE v. Regional Transportation Authority*, 346 Ill. App. 3d 125, 132, 803 N.E.2d 13, 20 (2003) ("[I]n deciding whether a claim is moot, we may consider matters *dehors* the record"), plaintiff completed his MSR term on April 27, 2012, and the Department discharged him from his commitment. Defendants contend this case is moot and plaintiff failed to argue any exception to the mootness doctrine applies.

¶ 18 Appellate jurisdiction requires an actual controversy. Reviewing courts will generally not hear abstract, hypothetical, or moot questions. *In re Andrea F.*, 208 Ill. 2d 148, 156, 802 N.E.2d 782, 787 (2003). An issue on appeal becomes moot where events occurring after the filing of the appeal render it impossible to grant effectual relief to the complaining party. *In re Christopher K.*, 217 Ill. 2d 348, 358-59, 841 N.E.2d 945, 952 (2005) (quoting *People v. Roberson*, 212 Ill. 2d 430, 435, 819 N.E.2d 761, 764 (2004)). "It is generally held that where the only relief sought is to set aside a sentence, the question of the validity of its imposition becomes moot when the sentence has been served." *In re Napier*, 83 Ill. App. 3d 503, 505, 404 N.E.2d 423, 425 (1980)); see also *In re Jabari C.*, 2011 IL App (4th) 100295, ¶ 19, 962 N.E.2d 8.

¶ 19 In this case, plaintiff challenged only his MSR term, arguing the additional time he spent serving his term of imprisonment should be credited to his two-year MSR term. Section 5-8-1(d) of the Unified Code states that "[e]xcept where a term of natural life is imposed, every sentence shall include as though written therein a term *in addition to* the term of imprisonment." (Emphasis added.) 730 ILCS 5/5-8-1(d) (West 2006). "The legislature's use of the phrase 'in addition to' dictates that the separate mandatory parole term in section 5-8-1(d) cannot be served during the term of imprisonment." *Faheem-El v. Klinicar*, 123 Ill. 2d 291, 298, 527 N.E.2d 307, 310 (1988).

¶ 20 Further, the principal purpose of the MSR program was not intended as imposition of punishment but to extend the Department's control over a prisoner's conduct. See *Faheem-El*, 123 Ill. 2d at 301, 527 N.E.2d at 311 (concluding that MSR was meant to extend the Department's control over the conduct of those who had minimal incentives to conform to society's standards and who were most likely to have difficulty reintegrating themselves into society).

¶ 21 This court has no authority to withhold a statutorily required MSR term from a sentence. See *People v. Porm*, 365 Ill. App. 3d 791, 794, 851 N.E.2d 205, 208 (2006) (citing *People v. Whitfield*, 217 Ill. 2d 177, 200-01, 840 N.E.2d 658, 672 (2005)).

¶ 22 Plaintiff completed his MSR term and the Department discharged him from his commitment. His claim that the additional time he spent serving his term of imprisonment should be credited to his two-year MSR term is moot.

¶ 23 A reviewing court may examine an otherwise moot issue when " 'the magnitude or immediacy of the interests involved warrant[s] action by the court.' " *People v. Jackson*, 231 Ill. 2d 223, 227-28, 897 N.E.2d 752, 755 (2008) (quoting *People ex rel. Black v. Dukes*, 96 Ill. 2d 273, 277, 449 N.E.2d 856, 858 (1983)). The public interest exception to the mootness doctrine requires (1) the existence of a question of public importance; (2) the desirability of an authoritative determination for the purpose of guiding public officers in the performance of their duties; and (3) the likelihood that the question will recur. *Andrea F.*, 208 Ill. 2d at 156, 802 N.E.2d at 787. This exception is construed narrowly and requires a clear showing of each element before it may be applied. *Roberson*, 212 Ill. 2d at 436, 819 N.E.2d at 764.

¶ 24 As stated above, plaintiff failed to argue any exception to the mootness doctrine

applies. Moreover, given the law as already articulated (see, e.g., *Whitfield*, 217 Ill. 2d 177, 840 N.E.2d 658, *Faheem-El*, 123 Ill. 2d 291, 527 N.E.2d 307; *Porm*, 365 Ill. App. 3d at 794, 851 N.E.2d at 208), no public interest is served by addressing the merits of the complaint. Plaintiff served his MSR term and the Department discharged him from his commitment. Plaintiff's request for *mandamus* and declaratory relief is moot.

¶ 25 Defendants argue "[i]n addition, plaintiff's claim for damages against defendant[s] *** is likewise barred by sovereign immunity." The doctrine of sovereign immunity "protects the State from interference in its performance of the functions of government and preserves its control over State coffers." (Internal quotation marks omitted.) *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 159, 940 N.E.2d 1122, 1128 (2010). The Illinois Constitution of 1970 abolished sovereign immunity "[e]xcept as the General Assembly may provide by law." Ill. Const. 1970, art. XIII, § 4. The General Assembly in turn reinstated sovereign immunity by enacting the State Lawsuit Immunity Act, which provides that "the State of Illinois shall not be made a defendant or party in any court" except as provided in the Court of Claims Act (705 ILCS 505/1 to 29 (West 2010)) and in several other statutes, none of which apply to this case. 745 ILCS 5/1 (West 2010). The Court of Claims Act established the Court of Claims as the exclusive forum for litigants to make claims against the State (705 ILCS 505/8 (West 2010)), including "[a]ll claims against the State for damages in cases sounding in tort" (705 ILCS 505/8(d) (West 2010)). Here, plaintiff's claim for damages is barred by sovereign immunity.

¶ 26

III. CONCLUSION

¶ 27

For the foregoing reasons, we dismiss this appeal as moot.

¶ 28

Appeal dismissed.