

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 130922-U

NO. 4-13-0922

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 2, 2014

Carla Bender

4th District Appellate

Court, IL

JUAN ZEPEDA,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Morgan County
THE DEPARTMENT OF CORRECTIONS;)	No. 12MR86
JACKSONVILLE CORRECTIONAL CENTER;)	
SALVADOR GODINEZ, Director; GLENN AUSTIN,)	Honorable
Warden; and RITA ROSSI, Records Department,)	Christopher E. Reif,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Pope and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* We dismiss as moot plaintiff's appeal of the trial court's order denying his petition for *mandamus* relief, as he has been released from prison and is serving his MSR term.

¶ 2 Plaintiff, Juan Zepeda, a former inmate in the custody of the Department of Corrections (DOC), filed a *pro se* petition for *mandamus* relief against DOC, Salvador Godinez (Department Director), Glenn Austin (Jacksonville Correctional Center (JCC) Warden), and Rita Rossi (JCC Records office manager) (collectively, defendants). Plaintiff alleged defendants wrongfully refused to provide him 60 days of earned educational credits. The trial court dismissed plaintiff's petition and plaintiff appealed. Subsequently, plaintiff was released from DOC custody.

¶ 3 On appeal, plaintiff argues the trial court erred in denying his petition. Defendants argue plaintiff's appeal is moot, claiming this court can provide no effective relief

because plaintiff is no longer in DOC custody and has been deported. We dismiss plaintiff's appeal as moot.

¶ 4

I. BACKGROUND

¶ 5

A. Procedural Posture

¶ 6

1. *Plaintiff's Mandamus Petition*

¶ 7

On August 20, 2012, plaintiff filed a *pro se* petition for *mandamus* relief, alleging defendants were improperly denying him 60 days of earned good-conduct credit. Plaintiff alleged he completed his general equivalency degree (GED) while in DOC custody. He argued section 3-6-3(a)(4.1) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-6-3(a)(4.1) (West 2010)) requires any prisoner who completes his or her GED while incarcerated be awarded 60 days of good-conduct credit, unless the inmate had previously earned a high school diploma or GED. Plaintiff stated this exception was "the main issue in which the Defendants have denied [him] his 60-days of educational Good Time Credit." Plaintiff also claimed he "feels as if he is being discriminated as a Hispanic-American in not being given a 'protected liberty interest' and 'equal protection of law.'" Plaintiff attached his inmate trust fund ledger and an "Official Transcript of GED Tests Results" issued on August 15, 2011, demonstrating he had passed all five test subjects, as exhibits.

¶ 8

2. *Defendants' Motion for Summary Judgment*

¶ 9

On October 23, 2012, defendants filed a motion for summary judgment under section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2012)), asserting plaintiff failed to raise a genuine issue of material fact. Defendants claimed plaintiff was ineligible to receive good-time credit under section 3-6-3(a)(4) and DOC regulations (20 Ill. Adm. Code 107.520(a)(6) (1996) (now section 107.520(b)(3) (2013))), which disqualify an

inmate who has previously received good-time credit under section 3-6-3(a)(4) and is subsequently convicted of a felony. See 730 ILCS 5/3-6-3(a)(4) (West 2010))

¶ 10 To support their conclusion plaintiff was ineligible for good-time credit, defendants attached the affidavit of Rita Rossi, Records office manager at JCC. Rossi asserted she reviewed plaintiff's records and determined "[plaintiff] served a previous term of incarceration." She also determined, "[d]uring his previous term of incarceration, he received earned good conduct credits on 2/14/1994." "Following his release from [DOC] on that charge, he committed the felony for which he is currently incarcerated." She also stated, as "[plaintiff] is currently serving time for his felony conviction which was committed after he received a previous award of educational or earned good conduct credits, he is ineligible to receive earned good conduct credits in accordance with 20 Ill. Admin. Code §107.520(a)(6) [(1996) (now section 107.520 (b)(3) (2013))]."

¶ 11 On October 29, 2012, the trial court granted plaintiff 30 days to respond to defendants' motion for summary judgment. On November 30, 2012, plaintiff filed a motion for extension of time. The record suggests plaintiff failed to obtain a ruling on this motion.

¶ 12 On October 7, 2013, the trial court entered an order dismissing defendants' petition. The court found "[p]laintiff is not entitled to good conduct credits for completion of his [GED] because he was convicted of a felony committed after having received a previous award of earned good conduct credits." On October 21, 2013, plaintiff filed a notice of appeal.

¶ 13 B. Plaintiff's Subsequent Release and Deportation

¶ 14 On February 5, 2014, plaintiff filed his brief in this court. Defendants replied and argued plaintiff's claim is moot because plaintiff has been released from DOC custody and deported. In support of this argument, defendants included as a supplemental appendix an

affidavit from Rossi. Rossi asserted "[o]n April 11, 2014, [plaintiff] was released from [DOC custody] to begin a two-year term of mandatory supervised release [(MSR)]." Rossi's affidavit included a printed document from DOC's website indicating plaintiff was released on April 11, 2014. (<https://www2.illinois.gov/idoc/Offender/Pages/InmateSearch.aspx> (last accessed on July 24, 2014)).

¶ 15 Rossi further asserted, on April 11, at the time of plaintiff's release, the Department of Homeland Security (DHS) served a warrant for plaintiff's arrest. Pursuant to the warrant, plaintiff was remanded to the custody of DHS, pending deportation proceedings. On April 29, 2014, plaintiff was deported to his native country of Mexico. Rossi included copies of documents supporting her assertions.

¶ 16 II. ANALYSIS

¶ 17 A. Mootness

¶ 18 Defendants argue plaintiff's appeal is moot because he has been released to serve his MSR term and has been deported from the United States. We agree defendant's release and subsequent commencement of his MSR term render his appeal moot.

¶ 19 We first note, information regarding plaintiff's release from DOC custody and subsequent deportation was not included in the trial court record, as plaintiff was released after the trial court's order. However, "[a] reviewing court can take judicial notice of events or facts which, while not appearing in the record, disclose that an issue has been mooted." *Dixon v. Chicago & North Western Transportation Co.*, 151 Ill. 2d 108, 116-17, 601 N.E.2d 704, 708 (1992). As plaintiff's release is central to our determination of whether his claim has become moot, we take judicial notice of this fact.

¶ 20 "It is a basic tenet of justiciability that reviewing courts will not decide moot or abstract questions or render advisory opinions." *In re J.T.*, 221 Ill. 2d 338, 349, 851 N.E.2d 1, 7 (2006). "An appeal is considered moot where it presents no actual controversy or where the issues involved in the trial court no longer exist because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party." *Id.* at 349-50, 851 N.E.2d at 7-8.

¶ 21 We cannot grant plaintiff effectual relief because he has been released to serve his MSR term. Under the Unified Code, MSR is a required "term in addition to the term of imprisonment." 730 ILCS 5/5-4.5-15(c) (West 2012). While MSR is a part of an inmate's sentence (*Taylor v. Cowan*, 339 Ill. App. 3d 406, 410, 790 N.E.2d 897, 902 (2003)), it is separate and distinct from the term of imprisonment (*Faheem-El v. Klinicar*, 123 Ill. 2d 291, 298, 527 N.E.2d 307, 310 (1988)). Thus, even though an individual may be in the "legal custody" of DOC during the MSR term (*Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430, 704 N.E.2d 350, 351 (1998)), the MSR term does not constitute part of the term of imprisonment. An inmate cannot be released to serve his MSR term until he has served his full term of imprisonment less any credit for good conduct. 730 ILCS 5/3-3-3(c) (West 2012).

¶ 22 Section 3-6-3(a)(4) permits the reduction of a prison term for completing certain educational programs, but it does not reduce the MSR period. See 730 ILCS 5/3-6-3(a)(4) (West 2010). Consequently, any good-time credit granted by this court could not shorten plaintiff's MSR term. See *People v. Whitfield*, 217 Ill. 2d 177, 200-201, 840 N.E.2d 658, 672 (2005) (holding the MSR term is statutorily mandated and cannot be altered by judicial fiat).

¶ 23 Defendants also argue this case is moot because plaintiff has been deported and is not subject to DOC supervision during his MSR period. Plaintiff's appeal is moot because

plaintiff has been released from prison and, as stated, we cannot award plaintiff sentencing credit against his MSR term. Therefore, we need not consider the impact of plaintiff's deportation.

¶ 24 B. Recognized Mootness Exceptions

¶ 25 We also agree with defendants that no recognized exceptions to the mootness doctrine apply to plaintiff's appeal.

¶ 26 1. *The Collateral-Consequences Exception*

¶ 27 Defendants argue the collateral-consequences exception does not apply, and we agree. Under this exception, a reviewing court may review an otherwise moot issue if the plaintiff has "suffered, or [is] threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." (Internal quotation marks omitted.) *In re Alfred H.H.*, 233 Ill. 2d 345, 361, 910 N.E.2d 74, 83 (2009) (quoting *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). We cannot see how plaintiff might suffer future injury if we allow DOC's decision regarding his sentence credit, and plaintiff points to no such injury. We conclude this exception does not apply.

¶ 28 2. *The Public-Interest Exception*

¶ 29 "The public interest exception allows a court to consider an otherwise moot case when (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question." *Id.* at 355, 910 N.E.2d at 80. This exception is construed narrowly and "requires a clear showing of each criterion." *People v. Roberson*, 212 Ill. 2d 430, 436, 819 N.E.2d 761, 764 (2004).

¶ 30 We do not dispute the proper application of sentencing credits according to statute is a question that is of a public nature. However, our determination of the issues raised in

