2018 IL App (5th) 140437-UB

NO. 5-14-0437

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Christian County.
	)	
v.	)	No. 13-CF-171
	)	
AUTUM VANDENBERGH,	)	Honorable
	)	Bradley T. Paisley,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* The appeal is dismissed as moot because the public-interest exception to the mootness doctrine does not apply to the question of the retroactivity of the amendments in question to the defendant's case, which the Illinois Supreme Court directed this court, in a supervisory order, to consider.

¶ 2 The defendant, Autum[1] Vandenbergh, has filed this appeal to seek credit for time spent in jail prior to sentencing, and for time spent on non-electronic home detention prior to sentencing, both of which are related to her conviction and sentence, in the circuit

[1]We note that the defendant's first name is spelled "Autum" on some court documents in this case and "Autumn" on others; on *pro se* documents written in her own hand, however, the defendant consistently has printed, and signed, her first name as "Autum," and we will presume she knows the spelling of her own name.

court of Christian County, for aggravated battery. For the reasons that follow, we dismiss, as moot, the defendant's appeal.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal follow. On September 3, 2013, the defendant was charged with a single count of aggravated battery. The defendant was arrested on September 19, 2013, and she remained in the Christian County jail until she posted bond on October 3, 2013. This period encompassed 15 days, counting both the day of arrest and the day of release from jail on bond. On January 23, 2014, the defendant pled guilty to the single count of aggravated battery. On July 10, 2014, the court gave the defendant the maximum sentence of five years' imprisonment in the Illinois Department of Corrections, followed by a year of mandatory supervised release. The period of September 19, 2013, through October 3, 2013, was correctly listed on the sentencing order as time spent in presentence custody; however, the defendant was credited for only 13 days served in pretrial detention, rather than 15 days.

¶ 5 When the defendant was released by the court on bond, it was done on the condition that she be placed on "non-electronic home confinement," with travel only for court and medical purposes; that she not consume drugs or alcohol; that she be subject to random testing for drugs and alcohol; and that she have no contact with the minor child who was the victim of the battery. The defendant was on non-electronic home detention, pursuant to the court's bond order, from October 3, 2013, until she was sentenced on July 10, 2014, a total period of time of 280 days. The court's sentencing order did not give her any sentencing credit for this period. On August 1, 2014, the defendant filed a *pro se*

motion for reduction of sentence. On August 27, 2014, her counsel filed a supplemental motion to reconsider sentence. After a hearing on the motion that day, the court denied the motion. The defendant filed a timely notice of appeal on August 28, 2014.

¶ 6 On August 19, 2016, this court issued an unpublished order in which we affirmed the defendant's conviction and sentence, awarded the defendant credit for 15, rather than 13, days of presentence custody, and denied the defendant credit for the 280 days spent on non-electronic home detention. *People v. Vandenbergh*, 2016 IL App (5th) 140437-U, ¶¶ 8-11. We based our ruling on a decision issued by our colleagues in the Third District, *People v. Smith*, 2014 IL App (3d) 130548. *Vandenbergh*, 2016 IL App (5th) 140437-U, ¶ 9. On November 23, 2016, the Illinois Supreme Court denied the defendant's petition for leave to appeal thereto, but, in the exercise of its supervisory authority, entered an order in which it directed us to vacate our initial unpublished order and reconsider our judgment in light of Public Act 99-0797 (eff. Aug. 12, 2016), which amended Article 8A of Chapter V of the Unified Code of Corrections (Code) (730 ILCS 5/5-8A) by changing the Article name from "the Electronic Home Detention Law" to "the Electronic Monitoring and Home Detention Law," and which, according to the supervisory order, "amended the language throughout to expand the statute to include both electronic monitoring and home detention." The supervisory order also directed us "to address whether the amendments apply retroactively to the defendant." Accordingly, on January 9, 2017, we vacated and held for naught our initial unpublished order. Following supplemental briefing by the parties and oral argument as requested by the parties, we now issue this order.

¶ 7 ANALYSIS

¶ 8 On appeal, the defendant does not contest her conviction, or the length of her sentence, and does not argue that she wishes to withdraw her guilty plea. Instead, the defendant raises, as she did in her initial appeal that led to our initial unpublished order, only the issue of credit against her sentence. In so doing, she raises two distinct sub-issues, contending that she is entitled to, and specifically requesting relief from this court in the way of: (a) a total of 15 days of credit for time spent in jail prior to sentencing, rather than the 13 days for which she was given credit by the trial court; and (b) 280 days of credit for time spent on presentence non-electronic home detention.

¶ 9 Because the defendant completed her prison sentence on or around September 11, 2016, and completed her one-year term of mandatory supervised release on or around September 11, 2017, we asked the parties to address the question of mootness in this case. See, *e.g.*, *People v. Shelton*, 401 Ill. App. 3d 564, 582 (2010) (sentencing challenge moot once defendant completes sentence).[2] Both parties urged this court to find that the public-interest exception to the mootness doctrine allowed us to consider this appeal with regard to the 280 days of credit for time spent on presentence non-electronic home detention.[3] However, the parties confined their arguments to the first direction from the Illinois Supreme Court in its supervisory order: that we vacate our initial unpublished order and reconsider our judgment in light of Public Act 99-0797 (eff. Aug. 12, 2016),

[2]Mootness was not at issue when the Illinois Supreme Court issued its supervisory order on November 23, 2016, because the defendant was still on mandatory supervised release at that time.

[3]The parties put forth no argument with regard to mootness and the credit for 15, rather than 13, days spent in jail prior to sentencing.

which amended Article 8A of Chapter V of the Code (730 ILCS 5/5-8A) by changing the Article name from "the Electronic Home Detention Law" to "the Electronic Monitoring and Home Detention Law," and which, according to the supervisory order, "amended the language throughout to expand the statute to include both electronic monitoring and home detention." Neither party addressed the question of mootness with regard to the second direction from the Illinois Supreme Court in its supervisory order: that we "address whether the amendments apply retroactively to the defendant." However, to examine this case in light of the amendments, we necessarily must first determine whether they apply retroactively.

¶ 10 The Illinois Supreme Court has weighed in authoritatively on the question of mootness, most recently in *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2016 IL 118129. "An appeal is moot if no actual controversy exists or when events have occurred that make it impossible for the reviewing court to render effectual relief." *Id.* ¶ 10. This is significant because as a general proposition, " 'courts of review in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided.' " *Id.* (quoting *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998)). The Illinois Supreme Court " 'will not review cases merely to establish a precedent or guide future litigation.' " *Id.* (quoting *Madison Park Bank v. Zagel*, 91 Ill. 2d 231, 235 (1982)). That is the case because "[w]hen a decision on the merits would not result in appropriate relief, such a decision would essentially be an advisory opinion." *Id.*

¶ 11 The parties in this case concede the foregoing, and indeed both cite the above case. The defendant specifically concedes that because she has completed her prison sentence and her term of mandatory supervised release, this court can no longer "grant her the relief she requested." However, both parties urge us to find that the public-interest exception to the mootness doctrine nevertheless applies. In *Commonwealth Edison*, the Illinois Supreme Court noted that "[t]he public interest exception to the mootness doctrine permits review of an otherwise moot question when the *magnitude* or *immediacy* of the interests involved warrants action by the court." (Emphases added.) *Id*. ¶ 12. The exception applies only if the question presented is (1) of a public nature, (2) in need of an authoritative determination for the future guidance of public officials, and (3) likely to recur. *Id*. The exception must be "narrowly construed and requires a clear showing of each of its criteria." *Id*. ¶ 13. Accordingly, "[i]f any one of the criteria is not established, the exception may not be invoked." *Id*. "Indeed, the public interest exception is invoked only on 'rare occasions' when there is an extraordinary degree of public interest and concern." *Id*.

¶ 12 With regard to the direction from the Illinois Supreme Court that this court address whether the amendments within Public Act 99-0797 (eff. Aug. 12, 2016) apply retroactively to the defendant in this case, we conclude that this case does not present one of those rare occasions in which the public-interest exception may be invoked. With regard to the second factor—whether the question is in need of an authoritative determination for the future guidance of public officials—the *Commonwealth Edison* court noted the longstanding rule that for this factor to apply, a reviewing court must look

"to whether the law is in disarray or conflicting precedent exists," and added that "[w]hen a case presents an issue of first impression, no conflict or disarray in the law exists." 2016 IL 118129, ¶ 16. The court reiterated that it " 'does not review cases merely to set precedent or guide future litigation.' " *Id.* ¶ 15 (quoting *Berlin v. Sara Bush Lincoln Health Center*, 179 Ill. 2d 1, 8 (1997)). No conflicting precedent or disarray exists with regard to whether the amendments within Public Act 99-0797 apply retroactively. In fact, an opinion from this court as to that question would be one of first impression, a situation in which *Commonwealth Edison* specifically states the exception does not apply. See *id.* ¶ 16.

¶ 13 Because the public-interest exception to the mootness doctrine does not apply to the question of whether the amendments within Public Act 99-0797 (eff. Aug. 12, 2016) apply retroactively, we conclude that were we to address the first direction given us by the Illinois Supreme Court in its supervisory order in this case—that we reconsider our judgment in light of Public Act 99-0797 (eff. Aug. 12, 2016), which amended Article 8A of Chapter V of the Code (730 ILCS 5/5-8A) by changing the Article name from "the Electronic Home Detention Law" to "the Electronic Monitoring and Home Detention Law," and which, according to the supervisory order, "amended the language throughout to expand the statute to include both electronic monitoring and home detention" —we would essentially be issuing an advisory opinion as to whether the case upon which we relied in our initial unpublished order, *People v. Smith*, 2014 IL App (3d) 130548, is still good law following the amendments. That is not something the Illinois Supreme Court has asked us to do, nor can we imagine that it would wish for us to do so.

¶ 14 CONCLUSION

¶ 15 For the foregoing reasons, we dismiss, as moot, the defendant's appeal.

¶ 16 Appeal dismissed.