

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) 140297-U

NO. 4-14-0297

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 30, 2014

Carla Bender

4th District Appellate

Court, IL

ARIC A. KIRKSEY,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
S.A. GODINEZ,)	No. 13MR413
Defendant-Appellee.)	
)	Honorable
)	Chris Perrin,
)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff's appeal is dismissed as moot because plaintiff has been released and is currently serving his mandatory supervised release term and the good-conduct credit he seeks cannot reduce that term.

¶ 2 In June 2013, plaintiff, Aric A. Kirksey, filed a section 1983 complaint seeking an order directing defendant, S.A. Godinez, as Director of the Department of Corrections, to review plaintiff's eligibility for 90 days of meritorious-good-time credit and 90 days of supplemental-meritorious-good-time credit. In September 2013, defendant filed a motion to dismiss. The same month, Plaintiff filed a response to defendant's motion to dismiss. After further briefing, in April 2014, the trial court granted defendant's motion to dismiss.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff was convicted of armed robbery (720 ILCS 5/18-2(a)(2) (West 2006))

and in July 2008, the trial court sentenced him to 14 years in the Department of Corrections (DOC). In his section 1983 complaint, plaintiff alleged in September, October, and December 2011 he requested defendant award him six months of meritorious-good-time (MGT) credit and statutory-meritorious-good-time (SMGT) credit pursuant to section 3-6-3(a)(3) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-6-3(a)(3) (West 2006)) and section 107.210(c) of DOC rules and regulations (20 Ill. Adm. Code 107.210(c), amended at 20 Ill. Reg. 6745 (eff. May 5, 1996)). Plaintiff alleged defendant never responded to his request. In March 2012, plaintiff filed a grievance. Plaintiff attached a copy of DOC's response to his grievance, a portion of which has been blocked out, to his section 1983 complaint. The July 2012 response indicated:

"Inmate B51061 Kirksey claims that he has not been given 180 days of MGT/SMGT in error. The relief requested is 'I would like to have the law 730 ILCS 5/3-6-3 paragraph 3 applied to me, and given 180 days good[-]conduct credit for meritorious service by the I.D.O.C. Director.' The in [sic] MGT/SMGT program has been suspended indefinitely. *** Based upon a total review of all available information, this Grievance Officer recommends that the grievance be denied."

Apparently, plaintiff filed an appeal to the administrative review board as the August 2012 response from the administrative review board is attached to plaintiff's section 1983 complaint. It stated, "No further redress: Award of [MGT] and [SMGT] are administrative decisions; therefore, this issue will not be addressed further."

¶ 5 Section 3-6-3 of the Unified Code was amended in June 2012. Both before and after the amendment, section 3-6-3(a)(3) basically required DOC's rules and regulations to provide the Director may award up to 180 days additional sentence credit for good conduct in specific instances as the Director deems proper. 730 ILCS 5/3-6-3(a)(3) (West 2011 and 2012). The amended statute also provides eligible inmates may be selected to receive sentence credit at the Director's "sole discretion" and "[c]onsideration may be based on, but not limited to, any available risk assessment analysis on the inmate, any history of conviction for violent crimes as defined by the Rights of Crime Victims and Witnesses Act, facts and circumstances of the inmate's holding offense or offenses, and the potential for rehabilitation." 730 ILCS 5/3-6-3(a)(3) (West 2012). Section 107.210 of DOC's rules, which governs the awarding of supplemental sentence credit, was also amended and, among other things, described circumstances under which an inmate is not eligible to receive supplemental sentence credit, including if an inmate has been returned to DOC as a parole or mandatory supervised release (MSR) violator. 20 Ill. Adm. Code 107.210(d), amended at 37 Ill. Reg. 1598 (eff. Feb. 1, 2013).

¶ 6 In his section 1983 complaint, plaintiff alleged he wrote a letter to Governor Quinn's office explaining the suspension of the MGT/SMGT program violated the *ex post facto* clause of the United States and Illinois Constitutions and asked to receive the six months' good-time credit he requested. Plaintiff attached to his complaint a September 2012 response from DOC to whom the Governor's office had forwarded plaintiff's letter. The response advised:

"You are requesting to be granted 180 days of Meritorious Good time you feel you are entitled to receive. As you are aware, this program, in which awards were at the discretion of the Director,

was suspended. The early release program which was signed this year by Governor Quinn is currently under review. Offenders will automatically be evaluated for eligibility for this program once it has been implemented. You should consult your assigned correctional counselor if you have any further questions regarding this matter."

¶ 7 In June 2013, plaintiff filed a section 1983 claim against defendant, alleging a violation of the *ex post facto* clause of the United States Constitution (art. 1, § 9) and Illinois Constitution (art. 1, § 16) when defendant declined to award him MGT and SMGT under section 3-6-3(a)(3) of the Unified Code (730 ILCS 5/3-6-3(a)(3) (West 2006) and section 107.210 of DOC rules (20 Ill. Adm. Code 107.210, amended at 20 Ill. Reg. 6745 (eff. May 5, 1996)) in effect at the time of his conviction and sentence. Plaintiff sought an order (1) declaring defendant violated the *ex post facto* clauses by applying the amended versions of section 3-6-3(a)(3) of the Unified Code and section 107.210 of DOC rules to plaintiff and (2) directing defendant to apply the law in effect at the time of plaintiff's conviction and sentence by awarding him 90 days MGT and 90 days of SMGT.

¶ 8 In September 2013, defendant filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code). 735 ILCS 5/2-615 (West 2012). Defendant alleged plaintiff failed to state a cause of action. Defendant maintained the changes to the provisions governing the awarding of supplemental sentence credit did not violate the *ex post facto* prohibition because sentence credit has always been awarded at the discretion of the Director of DOC. Consequently, defendant argued plaintiff had not been disadvantaged by any

changes in the law.

¶ 9 In September 2013, plaintiff responded to defendant's motion to dismiss, arguing he had been disadvantaged by the changes in the law and DOC rules because he was an MSR violator, which made him ineligible to receive supplemental sentence credit under the amended version of section 107.210(d)(4) of DOC rules. 20 Ill. Adm. Code 107.210(d)(4), amended at 37 Ill. Reg. 1598 (eff. Feb. 1, 2013).

¶ 10 In February 2014, defendant replied, arguing the *ex post facto* prohibition does not apply to every law that alters the situation of a party to his disadvantage. Instead, it only applies if the amended law changes the punishment to inflict a greater punishment than the punishment in effect at the time of commission of the crime. Plaintiff filed a reply thereto, arguing he had not questioned application of the *ex post facto* prohibition to the criminal law, but rather its retrospective application to good-time credit for prisoners.

¶ 11 In April 2014, the trial court granted defendant's motion to dismiss, finding plaintiff had failed to state a claim for which relief could be granted.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiff requests (1) a one-year deduction from his three-year term of MSR and (2) monetary relief of \$150 for each day he was held in DOC past March 27, 2014, or \$27,000 if he is held until September 26, 2014. Defendant argues the appeal should be dismissed as moot since plaintiff has been released from DOC and is now serving a term of MSR. Alternatively, defendant argues plaintiff failed to state a cause of action under section 1983 because no *ex post facto* prohibition applied to him. We dismiss the appeal as moot.

¶ 15 Plaintiff was released from prison and began serving his three-year MSR term on September 26, 2014. As a result, defendant argues plaintiff's appeal is moot because plaintiff has already been released from prison and, even if he were to receive any MGT or SMGT credit, he would not be able to use that credit to shorten the MSR term he is currently serving.

¶ 16 "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." *In re J.T.*, 221 Ill. 2d 338, 349-50, 851 N.E.2d 1, 7-8 (2006). In this case, no effectual relief can be granted because plaintiff was released from prison.

¶ 17 The language of the Unified Code indicates MSR is a "term in addition to the term of imprisonment." 730 ILCS 5/5-8-1(d) (West 2006). 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)). Although an individual on MSR may be in the "legal custody" of DOC for the duration of his release period (*Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430, 704 N.E.2d 350, 351 (1998); 730 ILCS 5/3-14-2(a) (West 2006)), the MSR term does not constitute a term of imprisonment. An inmate is not to be released to MSR until he has served his full term of imprisonment less any credit for good conduct. 730 ILCS 5/3-3-3(c) (West 2006). While section 3-6-3(a)(3) permitted the Director of DOC, at his or her discretion, to award up to 180 days of good-conduct credit for meritorious service in specific circumstances, such award would not reduce the term of the MSR period. See 730 ILCS 5/3-6-3(a)(3) (West 2006). As a result, any sentence 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) (recognizing MSR is statutorily mandated and cannot be altered by judicial fiat). Accordingly, this court cannot provide plaintiff with any effectual relief. Thus, plaintiff's appeal is moot.

¶ 18

III. CONCLUSION

¶ 19

For the reasons stated we dismiss plaintiff's appeal as moot.

¶ 20

Dismissed.