

No. 1-10-0058

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 04 CR 5900
)	
DWAYNE GRIFFIN,)	Honorable
)	Sharon M. Sullivan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Where prisoner brought *habeas corpus* and *mandamus* actions asserting his good-conduct credit was revoked in error, dismissal of *habeas* complaint was warranted where *habeas* action could not stand, and appeal from *mandamus* complaint was not filed within 30 days; the circuit court's judgment was affirmed in part and the appeal was dismissed in part.

¶ 2 Appellant Dwayne Griffin, an inmate in the Illinois correctional system, appeals the circuit court's orders dismissing his *pro se* complaints for *habeas corpus* and *mandamus* relief. He contends the court erred in dismissing those actions because his good-conduct credit was incorrectly revoked, resulting in an extension of his sentence. We affirm the dismissal of the

habeas corpus complaint on the merits and dismiss the remainder of this appeal for lack of jurisdiction.

¶ 3 Griffin was convicted of burglary following a 2005 jury trial at which he represented himself. Griffin was sentenced as a Class X offender to nine years in prison, followed by three years of mandatory supervised release (MSR). On direct appeal, this court affirmed. *People v. Griffin*, No. 1-05-0475 (2006) (unpublished order under Supreme Court Rule 23).

¶ 4 On January 6, 2008, Griffin, while in prison, prepared a *habeas corpus* complaint asserting he had completed his sentence for the 2005 offense but was not being released from prison. The complaint alleged that 30 days earlier, he was falsely accused and found guilty of two assault charges following a prison proceeding. Griffin alleged the Illinois Department of Corrections (IDOC) Adjustment Committee revoked the good-conduct credit he had earned toward the completion of his sentence to that point and determined he was to serve an additional three-year sentence beginning in December 2007. Griffin named as defendants to his complaint various prison officials under whose custody he had served.

¶ 5 In addition to his *habeas corpus* petition, Griffin filed a *pro se* request for a writ of *mandamus* asserting the same basis for relief. Those petitions were filed in the circuit court on September 1, 2009. The Cook County public defender was appointed to represent Griffin in the *habeas corpus* proceedings and also served as a friend of the court regarding Griffin's *mandamus* petition.

¶ 6 On October 2, 2009, the circuit court dismissed Griffin's request for *mandamus* relief. On November 18, 2009, the Illinois Attorney General filed a motion to dismiss the *habeas corpus* complaint for lack of personal jurisdiction over Lee Ryker, the warden of Lawrence Correctional Center, where Griffin was then in custody. The motion asserted that although a

copy of the complaint was mailed to Ryker, he was not personally served with notice of its filing.

¶ 7 On November 20, 2009, the court dismissed the *habeas corpus* complaint on substantive grounds. The court noted such relief was available to prisoners whose liberty was restrained when they were held beyond the expiration of their sentence and concluded that because Griffin had not completed his sentence on the burglary conviction, he was not entitled to relief under a *habeas corpus* theory. Griffin appealed the dismissal of both complaints on December 16, 2009.

¶ 8 On appeal, Griffin contends he is entitled to an immediate release from prison under *habeas corpus* because he had served his entire nine-year sentence for the 2005 offense at the time his petition was filed in 2009. Griffin challenged the validity of the Adjustment Committee's hearing that resulted in the revocation of his credit he had previously earned toward his sentence.

¶ 9 At the outset, we note that Griffin is no longer incarcerated but rather is currently serving his three year term of MSR, or parole, according to the Department of Corrections' web site, of which this court may take judicial notice. See *People v. McKinney*, 399 Ill. App. 3d 77, 79 (2010); see generally *People v. Absher*, 242 Ill. 2d 77, 82 n.2 (2011) (what was previously known as parole is now referred to as MSR). Because Griffin is within his MSR period, this appeal is not rendered moot because should this court conclude Griffin's credits were improperly revoked, he could be entitled to an early termination of that MSR. See, e.g., *People ex rel. Yoder v. Hardy*, 116 Ill. App. 3d 489, 492 (1983). However, as explained below, this court cannot make such a determination.

¶ 10 An order of *habeas corpus* is available only to obtain the release of a prisoner who has been incarcerated under a judgment of a court that lacked jurisdiction of the subject matter or the

person of the petitioner, or where there has been some occurrence subsequent to the prisoner's conviction that entitles him to release. *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008). Where the circuit court has found a *habeas corpus* complaint is insufficient on its face to warrant relief, the court may properly deny the complaint *sua sponte*. *Hennings v. Chandler*, 229 Ill. 2d 18, 31 (2008).

¶ 11 This court has granted relief in the form of a *habeas corpus* petition where a prisoner's good-conduct credits were improperly revoked. See *Yoder*, 116 Ill. App. 3d at 495-96 (granting petition for *habeas* relief and restoring petitioner's credits based on Adjustment Committee's failure to adhere to standards applicable to its hearing process). In the instant case, the credit to which Griffin would have been entitled if he complied with the rules for good-conduct credits was evidently revoked by the Department of Corrections upon finding that Griffin committed two assaults while in prison. An inmate's right to receive credit toward his sentence is contingent on his good behavior while in prison, and the Department has the right to revoke credits for disciplinary infractions. *Johnson v. Illinois Department of Corrections*, 368 Ill. App. 3d 147, 152 (2006). This court lacks any basis to review or disturb the decision of the Adjustment Committee to revoke any credit Griffin had earned. Therefore, the circuit court's dismissal of the *habeas corpus* petition is affirmed.

¶ 12 As to Griffin's *mandamus* claim, the State asserts Griffin failed to file his notice of appeal of that ruling within 30 days and that this court therefore lacks jurisdiction of that portion of this appeal. An appellant must file a notice of appeal within 30 days of the entry of the final judgment being appealed. Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008). The *mandamus* action was dismissed on October 2, 2009. Griffin filed his appeal of that ruling on December 16, 2009, which was more than 30 days following entry of the judgment. Therefore, this court has no jurisdiction to consider the *mandamus* action, and that portion of this appeal is dismissed.

1-10-0058

¶ 13 In summary, the circuit court's dismissal of Griffin's *habeas corpus* petition is affirmed, and the portion of the appeal involving the *mandamus* petition is dismissed for lack of jurisdiction.

¶ 14 Judgment affirmed in part; appeal dismissed in part.