

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).

2016 IL App (4th) 140034-U
NOS. 4-14-0034, 4-14-0035 cons.

FILED
April 5, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
LESTER L. WINTER, JR.,)	Nos. 08CF363
Defendant-Appellant.)	10CF714
)	
)	Honorable
)	Derek J. Girton,
)	Judge Presiding.

Justice Holder White delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* We grant the office of the State Appellate Defender's motion to withdraw as appellate counsel and affirm the trial court's judgment where no meritorious issues could be raised on appeal.

¶ 2 This case comes to us on the motion of the office of the State Appellate Defender (OSAD) to withdraw as counsel on appeal on the ground no meritorious issues can be raised in this case. For the reasons that follow, we grant OSAD's motion and affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 During a May 1, 2009 court appearance, defendant, Lester L. Winter, Jr., entered a partially negotiated plea of guilty to aggravated criminal sexual abuse (with a victim under 18 years of age and who is a family member) (count I) (720 ILCS 5/12-16(b) (West 2008)) and

aggravated criminal sexual abuse (defendant was 17 years of age or over and committed an act of sexual conduct with a victim who was under 13 years of age) (count II) (720 ILCS 5/12-16(c)(1)(i) (West 2008)) in Vermilion County case No. 08-CF-363. Pursuant to the plea, the State agreed to a sentence cap of three years' imprisonment. Following defendant's June 23, 2009 sentencing hearing, the trial court placed defendant on four years' sex-offender-specific intensive probation, with the first six months to be served in the Vermilion County public safety building (Jail).

¶ 5 Defendant, while on probation and after serving six months in Jail, was charged by the State, on December 30, 2010, with predatory criminal sexual assault of a child (count I) (720 ILCS 5/12-14.1(a)(1) (West 2010)) in Vermilion County case No. 10-CF-714. On January 13, 2011, the State filed an amended information in case No. 10-CF-714, adding the charge of aggravated criminal sexual abuse (defendant was 17 years of age or over and committed an act of sexual conduct with a victim who was under 13 years of age) (count II) (720 ILCS 5/12-16(c)(1)(i) (West 2010)).

¶ 6 Based on defendant's new case, the State, on March 5, 2012, filed a petition to revoke defendant's probation. The petition alleged defendant violated his probation by committing the act of aggravated criminal sexual abuse, in that on or about December 23, 2010, when defendant, who was 17 years of age or older, committed an act of sexual conduct with a minor, who was under 13 years of age.

¶ 7 While in court on March 9, 2012, defendant entered a fully negotiated disposition, admitting violating his probation in case No. 08-CF-363 and pleading guilty to count II in case No. 10-CF-714. The State agreed to dismiss count I in case No. 10-CF-714. Both cases were continued for imposition of an agreed sentence. By agreement of the parties, on April 24, 2012,

the trial court revoked defendant's probation and resentenced him to five years' imprisonment in case No. 08-CF-363, with two years' mandatory supervised release (MSR) and 140 days of sentence credit for time served from June 23, 2008, to August 11, 2008, and June 22, 2009, to September 20, 2009. In addition, the court sentenced defendant to five years' imprisonment in case No. 10-CF-714, to be served concurrent to the sentence in case No. 08-CF-363, with four years' MSR and 106 days of sentence credit for time served from December 30, 2010, to April 14, 2011.

¶ 8 Defendant, on July 29, 2013, filed a motion for order *nunc pro tunc*, arguing he was not given proper sentence credit for time served. Defendant argued the 140 days of sentence credit for case No. 08-CF-363 and 106 days for case No. 10-CF-714, for a total of 246 days, should be taken off his concurrent five-year sentences as a whole instead of being applied to each case individually. Defendant's credit sheet from the Illinois Department of Corrections (Department) indicated defendant was credited a total of 106 days toward his concurrent five-year sentences. Defendant filed an amended motion for order *nunc pro tunc* on August 20, 2013, which sought the same relief as his original motion.

¶ 9 In its November 20, 2013, denial of defendant's motion for order *nunc pro tunc*, the court stated, "[the Department] always picks one case as the controlling case. It is [the Department's] discretionary decision as to which case will control for sentencing credit purposes. [The Department] picked case [No. 10-CF-714] as the controlling case and credited [d]efendant 106 days, this is a correct credit." On December 10, 2013, defendant filed a motion to reconsider, presenting the same sentence credit argument, which the trial court denied. On January 3, 2014, defendant filed a notice of appeal, challenging the denial of his motion for order *nunc pro tunc* and his motion to reconsider.

¶ 10 Following the January 16, 2014, appointment of OSAD to serve as defendant's counsel, OSAD, in July 2015, moved to withdraw. The basis of the motion was OSAD's representation it thoroughly reviewed the record and concluded any request for review would be without merit. The record shows service of the motion on defendant. On its own motion, this court granted defendant leave to file additional points and authorities by August 13, 2015, but defendant has not done so. After examining the record, we grant OSAD's motion and affirm the trial court's decision.

¶ 11 II. ANALYSIS

¶ 12 OSAD contends the record shows no meritorious issues that can be raised on appeal. Specifically, OSAD contends defendant received the correct sentence credit and defendant's motions raised no other issues that can be raised on appeal. We note under *People v. Latona*, 184 Ill. 2d 260, 272, 703 N.E.2d 901, 907 (1988), a defendant with sentence credit for time served in nonsimultaneous custody should receive a sentence credit for the total number of days in custody, which is then subtracted from the longest concurrent sentence. "While a defendant sentenced to concurrent sentences receives credit for time served against *each* sentence, because the sentences are served concurrently, the credits are applied in that manner as well." (Emphasis in original.) *Id.* at 271, 703 N.E.2d at 907. Thus, defendant's point that he is entitled to a total of 246 days' sentence credit is well taken. Nevertheless, we grant OSAD's motion because we find the issue is moot.

¶ 13 The only issue raised in defendant's motion for order *nunc pro tunc* and motion to reconsider was whether he was given proper sentence credit, and therefore, whether the motions were properly denied is the only issue for potential review. Because defendant has since been released to serve his MSR term, although in custody, the sentence credit issue is moot.

¶ 14 While there are exceptions, generally, a court of review should refrain from deciding issues that are moot. *Marion Hospital Corp. v. Illinois Health Facilities Planning Board*, 201 Ill. 2d 465, 471, 777 N.E.2d 924, 927-28 (2002). "A case is moot if the issues involved in the trial court have ceased to exist because intervening events have made it impossible for the reviewing court to grant effectual relief to the complaining party." *People v. Roberson*, 212 Ill. 2d 430, 435, 819 N.E.2d 761, 764 (2004). A challenge against defendant's sentence is moot "where defendant has completed serving his sentence." *People v. McNulty*, 383 Ill. App. 3d 553, 558, 892 N.E.2d 73, 77 (2008). The website for the Department indicates defendant served 2 ½ years of his concurrent five-year sentences due to reductions for good conduct and sentence credit. See Winter, Lester, Illinois Department of Corrections: Offender Search, <https://www.illinois.gov/IDOC/Offender/Pages/InmateSearch.aspx> (search "IDOC#"; enter "M28567") (last visited Dec. 30, 2015). OSAD explains defendant was discharged from his prison sentence on July 9, 2014, and has since been serving his MSR term, in custody, with a July 9, 2016, discharge date. While the MSR term is part of defendant's sentence, this court has no authority to strike or shorten an MSR term. *People v. Whitfield*, 217 Ill. 2d 177, 202, 840 N.E.2d 658, 673 (2005). Thus, there is no way to provide defendant any additional credit toward his sentence. Because no effectual relief can be granted, we conclude this appeal is moot.

¶ 15 Accordingly, we grant OSAD's motion to withdraw as counsel in case Nos. 4-14-0034 and 4-14-0035.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we grant OSAD's motion for leave to withdraw as counsel and affirm the trial court's judgment.

¶ 18 No. 4-14-0034, Affirmed.

¶ 19

No. 4-14-0035, Affirmed.