

NOTICE

Decision filed 06/09/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 130505-U

NO. 5-13-0505

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Madison County.
)	
v.)	No. 11-CF-78
)	
WARREN W. WAGONER,)	Honorable
)	Richard L. Tognarelli,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's appeal is dismissed as moot where his MSR term expired during the pendency of his appeal and the error he complains of was corrected.

¶ 2 In January 2011, the State filed an information charging the defendant, Warren W. Wagoner, with one count of aggravated criminal sexual abuse, a Class 2 felony with a sentencing range of three to seven years. 720 ILCS 5/12-16(d), (g) (West 2010); 730 ILCS 5/5-4.5-35(a) (West 2010). In November 2011, the defendant pled guilty to the charge and was sentenced to a four-year term of imprisonment followed by a four-year term of mandatory supervised release (MSR). When the defendant entered his plea, his

attorney noted that the sentence would be "a 50 percent sentence." See 730 ILCS 5/3-6-3(a)(2.1) (West 2010).

¶ 3 In June 2013, the defendant filed a petition for relief from judgment (735 ILCS 5/2-1401 *et seq.* (West 2012)), arguing that his four-year term of MSR should be reduced to a two-year term because he had no prior convictions for aggravated criminal sexual abuse. In July 2013, the State filed a motion to dismiss the defendant's petition, arguing that the trial court had properly imposed a four-year term of MSR because the victim of the defendant's offense was under the age of 18. In October 2013, the trial court granted the State's motion to dismiss, and the defendant filed a timely notice of appeal.

¶ 4 DISCUSSION

¶ 5 The MSR term for a Class 2 felony is generally two years. See 730 ILCS 5/5-8-1(d)(2) (West 2010). For a second or subsequent conviction for the offense of aggravated criminal sexual abuse, however, the term is four years if the victim was under 18 years of age. See 730 ILCS 5/5-8-1(d)(5) (West 2010); *People v. Anderson*, 402 Ill. App. 3d 186, 190 (2010). On appeal, the parties thus agree that the age of the victim does not provide an independent basis for the imposition of a four-year term and that the enhancement is only applicable to a second or subsequent offense.

¶ 6 Here, although the victim was under 18 years of age, the defendant's criminal history report that the trial court considered when accepting his plea indicates that he has no prior convictions for the offense of aggravated criminal sexual abuse. Accordingly, the defendant should have been sentenced to a two-year term of MSR rather than a four-year term. The defendant thus asks that we reduce his MSR term by two years and

order that the mittimus be corrected accordingly. See *People v. Smith*, 2016 IL App (1st) 140039, ¶ 20 (noting that a reviewing court may order the correcting of a mittimus without remanding the cause to the trial court). Because the defendant's MSR term ended during the pendency of this appeal, however, we dismiss the appeal as moot.

¶ 7 An appeal is moot when the issue presented in the trial court no longer exists because intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party. *Felzak v. Hruby*, 226 Ill. 2d 382, 392 (2007). The fact that a case is pending on appeal when the intervening events occur does not alter this conclusion. *Id.* "A case must remain a legal controversy from the time filed in the appellate court until the moment of disposition." *Davis v. City of Country Club Hills*, 2013 IL App (1st) 123634, ¶ 10.

¶ 8 It is well settled that a reviewing court may take judicial notice of the information that the Illinois Department of Corrections (DOC) provides on its official website. *People v. Smith*, 2014 IL App (4th) 121118, ¶ 34; *People v. Young*, 355 Ill. App. 3d 317, 321 n.1 (2005). A reviewing court may also consider matters *dehors* the record "insofar as they concern the question of mootness." *Unity Ventures v. Pollution Control Board*, 132 Ill. App. 3d 421, 430 (1985).

¶ 9 In the present case, our review of the information available on DOC's website indicated that the defendant was no longer on MSR, a fact which DOC subsequently confirmed. Through facsimile correspondence, DOC also provided us with an official copy of the defendant's custody history, which indicates that he spent two years on MSR before being discharged on January 15, 2015. It thus appears that DOC recognized that

the defendant should not have been sentenced to a four-year term of MSR and made the appropriate correction. In any event, because it is now impossible for us to grant the defendant effectual relief, we dismiss his appeal as moot.

¶ 10

CONCLUSION

¶ 11 Because the defendant ultimately served a two-year term of MSR that has long since expired, his present appeal is hereby dismissed as moot.

¶ 12 Appeal dismissed.