2013 IL App (1st) 122864-U

FOURTH DIVISION
November 21, 2013

No. 1-12-2864

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BENJAMIN PRUITT, Plaintiff-Appellant, v. SALVADOR GODINEZ, Director, Illinois Department of Corrections, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 92 CR 22661 Honorable Michael B. McHale, Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court. Justices Lavin and Epstein concurred in the judgment.

ORDER

¶ 1 *HELD*: The circuit court's order denying Plaintiff's petition for *mandamus* relief is dismissed as moot as we cannot provide plaintiff with effectual relief.

¶ 2 Plaintiff Benjamin Pruitt filed a petition for *mandamus*

relief, seeking an order directing defendant Salvador Godinez, the Director of the Department of Corrections (Director), to release him from incarceration immediately or to consider his request for 90 days of meritorious good time (MGT) credit. The Director filed a motion to dismiss Pruitt's *mandamus* request, which the trial court granted upon reconsideration. Pruitt now appeals the trial court's dismissal of his request for *mandamus* relief claiming: (1) he has a right to have the Director review his request for MGT credit; and (2) by suspending the MGT program, the Governor unconstitutionally created an ex post facto law that prevented Pruitt from having his MGT credit request considered. For the reasons that follow, we find the issues presented in this appeal are moot and, accordingly, we must dismiss this appeal.

¶ 3 BACKGROUND

¶ 4 On September 17, 1992, plaintiff Benjamin Pruitt was arrested and subsequently charged with murder. After a bench trial, Pruitt was found guilty of first-degree murder, attempted armed robbery and unlawful use of a weapon by a felon. He was sentenced to 40 years in prison for first-degree murder, 15 years for attempted armed robbery and 5 years for the unlawful use of a weapon by a felon. The sentences were to run concurrently, and Pruitt was entitled to receive day-for-day good time credit under

the law in effect at the time of his sentencing. This would allow Pruitt to be released after serving 20 years of his 40-year sentence. The issue in this appeal is not the day-for-day good time credit. Pruitt's *mandamus* claim instead requests that the Director determine whether he is entitled to an additional 90 days of meritorious good time (MGT) credit. At the discretion of the Director, incarcerated individuals are eligible to receive up to 180 days of meritorious good time credit under the early release program. 730 ILCS 5/3-6-3 (West 2008). Under this statute, however, individuals convicted of first-degree murder may only receive a maximum of 90 days of MGT credit. If Pruitt received the maximum 90 days of MGT credit, Pruitt's release date would be June 17, 2012, rather than the scheduled September 17, 2012 release date.

¶ 5 However, on December 14, 2009, Illinois Governor Patrick Quinn ordered the immediate suspension of the early release program because of problems with the law's implementation. A new version of the early release statute was enacted on June 22, 2012. See 730 ILCS 5/3-6-3 (West 2013). The new law requires that the Department of Corrections draft rules for awarding and revoking good-time credit. However, as of the date of this appeal, the Department of Corrections had not yet established those rules and regulations.

¶ 6 On January 27, 2012, Pruitt made an initial request for an award of 90 days of MGT credit. In response to this request, Pruitt received a letter that read: "The MGT/SMGT program is not active at this time." On March 22, 2012, Pruitt filed a grievance requesting MGT credit. In response to this request, Pruitt received two responses: one that stated "MGT/SMGT currently on hold and being reviewed" and another that stated "MGT/SMGT currently being reviewed and is on hold. It is awarded at the discretion of the Director and is an Administrative Decision." Pruitt appealed these responses to the Administrative Review Board in April 2012; however, the Administrative Review Board returned his paperwork stating that there would be "[n]o further redress" because awards of MGT and SMGT "are administrative decisions."

¶ 7 On April 30, 2012, counsel for Pruitt sent a letter to the warden at Pinckneyville (the facility where Pruitt was being held), Donald Gaetz, urging Gaetz that Pruitt was a good candidate for MGT credits. On May 14, 2012 and June 27, 2012, Pruitt's counsel made additional requests for Pruitt's MGT credit. As we noted earlier, a new version of the early release statute was passed on June 22, 2012, and there were no substantive changes to the portions of the statute at issue in this case. Nothing in the record indicates that Pruitt's

counsel's letters were answered.

¶ 8 On July 26, 2012, Pruitt filed a document entitled "Petitioner Benjamin Pruitt's Motion for Release From the Penitentiary At Pinckneyville, Illinois, Or, In The Alternative, Motion For the Director of The Illinois Department Of Corrections To Apply The Proper Meritorious Good Time Credit Calculation, Which Existed As Of The Date Of Petitioner's Conviction." Despite the title, Pruitt advised the court that this was a petition for *mandamus* relief against the Director of the Department of Corrections. In the petition, Pruitt requested that he either be released immediately or that the Director of the Department of Corrections, Salvador Godinez (Director), be ordered to review his request for MGT credit.

¶ 9 In response to Pruitt's *mandamus* request, the Director filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure. See 735 ILCS 5/2-615 (West 2008). In the motion, the Director argued that Pruitt had failed to demonstrate a clear right to *mandamus* relief. He argued that MGT, unlike other forms of sentence credit, is not incorporated into an inmate's sentence and that inmates cannot be considered for MGT until they have been sentenced and served some portion of the sentence. The Director also noted that he would be unable to comply with a writ of *mandamus* because the law that governed MGT

is no longer in effect, and, while a new statute took effect on June 22, 2012, the rules and regulations governing the awarding of MGT credit under the new statute had not yet been promulgated.

¶ 10 On August 22, 2012, the circuit court denied the motion to dismiss and granted Pruitt's writ of *mandamus* in part by ordering the Director to consider Pruitt's request for 90 days of MGT credit and respond to such request by 10:05 AM on August 24, 2012. In response, the Director filed a motion to reconsider. In his motion to reconsider, the Director noted that the Illinois Appellate Court has held the Code of Corrections creates no enforceable rights for inmates beyond those that are constitutionally required, and that other courts have declined to find a constitutional right to MGT credit. The Director explained that until the regulations are in place, no framework exists for him to exercise his discretion in considering eligible inmates for sentence credit. He further argued that because the Department of Corrections is an administrative agency, it has no jurisdiction to act outside its statutory authority. Until the promulgation of rules, there is no statutory authority to even consider Pruitt for sentence credit. After considering these arguments on the motion for reconsideration, on August 27, 2012, the circuit court granted the Director's motion to reconsider, granted the Director's motion to dismiss, and vacated the order

that had been entered on August 22, 2012.

¶ 11 Following the entry of the circuit court's August 27, 2012 order, Pruitt appealed claiming: (1) he has a right to have the Director review his request for MGT credit; and (2) by suspending the MGT program, the Governor unconstitutionally created an ex post facto law that prevented him from having his MGT credit request reviewed. Since the filing of this appeal, Pruitt has been released from incarceration and is serving his mandatory supervised release (MSR) sentence. For the reasons that follow, we find that the issues raised by Pruitt are moot and, accordingly, we dismiss the appeal.

¶ 12 ANALYSIS

¶ 13 In this appeal, Pruitt requests *mandamus* relief in the form of an order compelling the Director to exercise his statutorily-vested discretion and determine whether he is entitled to MGT credit pursuant to a statute that was suspended at the time of his *mandamus* request. Before addressing the merits of Pruitt's *mandamus* claim, however, we must first address the Director's mootness argument.

¶ 14 I. Pruitt's Claim Is Moot

¶ 15 The Director argues that Pruitt's appeal is moot because Pruitt has already been released from prison and, even if he were to receive any MGT credit, he would not be able to use that

credit to shorten the mandatory supervised release (MSR) sentence he is currently serving. Pruitt in turn argues that his appeal is not moot because the MGT credit can be applied against his MSR or, in the event this court finds that it cannot, his case falls under the public-interest exception to the mootness doctrine, which would allow us to review this case despite it being moot.

¶ 16 In support of his argument that MGT credit can be credited against MSR, Pruitt pulls a quote from *People ex rel. Yoder v. Hardy*, 116 Ill. App. 3d 489, 492 (1983) that states: "At the outset, we note that although petitioner has been released from custody, he is presently serving a term of mandatory supervised release. This appeal, therefore, is not rendered moot because a finding that petitioner's good conduct credit was improperly revoked might entitle him to an earlier termination of such supervision." *Yoder*, 116 Ill. App. 3d at 492. However, *Yoder*, which dealt with restoring good-conduct credit that had been improperly revoked, does not comport with the statutory law governing MSR or our supreme court's more recent ruling in *People v. Whitfield*, 217 Ill. 2d 177 (2005).

¶ 17 The language of the Unified Code of Corrections (the Code) indicates that MSR is a "term in addition to the term of imprisonment." 730 ILCS 5/5-8-1(d) (West 2008). While MSR is a part of an inmate's sentence (*Taylor v. Cowan*, 339 Ill. App. 3d

406, 410 (2003)), it is separate and distinct from the term of imprisonment (*Faheem-El v. Klincar*, 123 Ill. 2d 291, 298 (1988)). Although an individual serving MSR may be in the "legal custody" of the Department of Corrections for the duration of his release period (730 ILCS 5/3-14-2(a) (West 2008); *Barney v. Prisoner Review Board*, 184 Ill. 2d 428, 430 (1998)), the MSR term does not constitute a term of imprisonment.

¶ 18 Moreover, since *Yoder* was decided, our supreme court recognized that MSR is statutorily mandated and cannot be altered by a judicial order. *People v. Whitfield*, 217 Ill. 2d 177 (2005). In *Whitfield*, the defendant was not advised of the 3-year MSR that would be added to his 25-year sentence when he entered into a plea bargain. Having determined that this amounted to a violation of the defendant's constitutional rights, our supreme court remedied the violation by reducing the defendant's imprisonment term to 22 years, leaving the 3-year MSR intact, thus representing the 25-year sentence that the defendant had bargained for. The court took the three years away from the sentence rather than the MSR because it recognized that MSR is mandated by statute and the court has no authority to withhold a MSR term in a sentence. See *Whitfield*, 217 Ill. 2d at 202-05. Therefore, because any potential MGT credit that Pruitt might receive cannot be used to modify the statutorily-imposed MSR that

Pruitt is currently serving, we cannot provide Pruitt with effectual relief, making this appeal moot.

¶ 19 II. Pruitt's Claim Does Not Fall Within Any Exception To The Mootness Doctrine

¶ 20 Pruitt argues that, in the event this court finds his appeal moot, the issues he has raised fall within the public-interest exception to the mootness doctrine. A reviewing court may review an otherwise moot issue pursuant to the public-interest exception to the mootness doctrine. *In re Mary Ann P.*, 202 Ill. 2d 393, 402 (2002). The factors a reviewing court will consider when deciding whether to address a moot case under the public-interest exception are: (1) the public nature of the question; (2) the likelihood that the question will recur; and (3) the desirability of an authoritative determination for the purpose of guiding public officers. *People v. Roberson*, 212 Ill. 2d 430, 435-36 (2004). If all three factors are not present, the appeal should be dismissed. *Butler v. Illinois State Board of Elections*, 188 Ill. App. 3d 1098, 1101 (1989). This exception is construed narrowly and requires a clear showing of each element before it may be applied. *People v. Jackson*, 231 Ill. 2d 223, 228 (2008); *In re Adoption of Walgreen*, 186 Ill. 2d 362, 365 (1999).

¶ 21 While we do not deny that the application of good-conduct credit could be an issue of public concern, Pruitt cannot provide a "clear showing" that the questions presented in this unique

case are likely to recur "with such frequency as to make imperative the need for a positive rule for the future guidance of public officials." *People ex rel. Foreman v. Village of North Barrington*, 191 Ill. App. 3d 544, 556 (1989); see *People ex rel. Cairo Turf Club, Inc. v. Taylor,* 2 Ill. 2d 160, 164 (1954).[1]

¶ 22 Because MGT is applied at the end of one's sentence and the maximum amount of MGT that can be awarded is 180 days, anyone who may have applied and been eligible for such credit when the MGT statute was suspended between December 2009 and June 2012 is already out of prison as it has been well over 180 days since the June 2012 law was enacted. Thus, given near impossibility of this situation continuing to arise "with such frequency as to make imperative the need for a positive rule for the future guidance of public officials," we find that the issues presented in this appeal do not fall within the public-interest exception to the mootness doctrine. See *Foreman*, 191 Ill. App. 3d at 556; see also *Cairo Turf Club, Inc.,* 2 Ill. 2d at 164.

¶ 23 We also find that there is no desirability to make any type

[1] Pruitt's attempt to make a "clear showing" that this same fact pattern will arise again is encompassed in the following statement in Pruitt's brief: "[T]his issue is likely to recur because the striking of the MGT program affected numerous inmates, not just Plaintiff. Unlike Plaintiff, many of those individuals remain incarcerated." This bare, hypothetical assertion does not create a "clear showing" that the questions presented within this appeal will likely recur in the future. See *People v. Jackson*, 231 Ill. 2d at 228.

of authoritative determination for the purpose of guiding public officials because, as addressed below, *mandamus* is an inappropriate means of seeking redress in this situation. Therefore, because the issues presented in this appeal are moot and do not fall within the public-interest exception, we must dismiss this appeal.

¶ 24 III. Even If We Addressed The Merits Of Pruitt's Claim, We Would Still Affirm The Trial Court's Ruling Because *Mandamus* Relief Cannot Be Granted Under The Circumstances Of This Case

¶ 25 Even if we were to review the merits of Pruitt's moot *mandamus* request, we would still affirm the trial court's dismissal of such a request. As stated earlier, in this appeal, Pruitt is requesting *mandamus* relief in the form of an order compelling the Director to exercise his statutorily-vested discretion and determine whether he is entitled to MGT credit. *Mandamus* is an extraordinary civil remedy that will be granted to enforce, as a matter of right, the performance of official nondiscretionary duties by a public officer. *Lee v. Findley,* 359 Ill. App. 3d 1130, 1133 (2005). The duty sought to be performed must be a ministerial, nondiscretionary one. *McClaughry v. Village of Antioch*, 296 Ill. App. 3d 636, 643 (1998). *Mandamus* will issue only where the plaintiff has fulfilled his burden (see *Mason v. Snyder,* 332 Ill. App. 3d 834, 840 (2002)) to set forth every material fact needed to demonstrate that: (1) he has a

clear right to the relief requested; (2) there is a clear duty on the part of the defendant to act; and (3) clear authority exists in the defendant to comply with an order granting *mandamus* relief. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433-34 (2007); *Baldacchino v. Thompson*, 289 Ill. App. 3d 104, 109 (1997). Absent an abuse of discretion, a reviewing court will not overturn the trial court's grant or denial of a writ of *mandamus*. *Crump v. Illinois Prisoner Review Board*, 181 Ill. App. 3d 58, 60 (1989); *Franks v. Tucker*, 132 Ill. App. 3d 455, 462 (1985). *Mandamus* cannot be used to direct a public official or body to reach a particular decision or to exercise its discretion in a particular manner, even if the judgment or discretion has been erroneously exercised. *Crump*, 181 Ill. App. 3d at 60. The failure of a public official to exercise his vested discretion is the proper subject of a writ of *mandamus*. *Id*.

¶ 26 A. *Mandamus* Is Inappropriate Because The Director Had No Clear Duty to Act.

¶ 27 First and foremost, the official from whom Pruitt is seeking *mandamus* relief must have a clear duty to act and perform the requested relief. *Mandamus* relief is appropriate only in instances where the defendant (in this case, the Director) has a clear duty to act. *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229

(1999) ("A writ of mandamus will not be granted unless the plaintiff can show a clear, affirmative right to relief, a clear duty of the defendant to act, and clear authority in the defendant to comply with the writ.").

¶ 28 Here, at the time Pruitt requested *mandamus* relief, the Director had no clear duty to review MGT requests because he had no authority to review MGT requests. The Illinois Department of Corrections is an administrative agency, and "[a]n administrative agency is limited to the powers granted to it by the legislature, and any actions it takes must be authorized by statute." *Crittenden v. Cook County Comm'n on Human Rights*, 2012 IL App (1st) 112437, ¶78 (2012). The record shows that on December 14, 2009, Governor Patrick Quinn ordered the immediate suspension of the meritorious good-time credit (MGT) program. The defendant applied for MGT credit after the Governor issued his order. On June 22, 2012, a new statute governing the MGT program was passed. Pruitt filed his petition for *mandamus* on July 25, 2012, following the new statute's enactment. The rules and regulations regarding the awarding of early release under the statute had not been promulgated as required by statute. Accordingly, the guidelines which the Director was to consider when awarding MGT credit were nonexistent at the time of Pruitt's *mandamus* request. Thus, the Director had no source of authority and no guidelines

to follow for reviewing MGT requests when Pruitt made his *mandamus* claim and, accordingly, no clear duty to act. In fact, Pruitt concedes that the Director did not have the authority to act when he requested *mandamus* relief within his reply brief as he states: "the Director was prevented from exercising his discretion as a result of the Governor's suspension of the MGT program." Reply Br., 8. Therefore, without authority, the defendant had no clear duty to review MGT petitions.

¶ 29 Moreover, besides the fact that the Director had no clear duty to review Pruitt's MGT request at the time he filed for *mandamus* relief, due to the discretionary nature of MGT credit, as opposed to automatic sentence credit that is often considered at the time of plea bargaining,[2] our Illinois courts have held that the Director does not even need to consider requests for MGT

[2] The Unified Code of Corrections (Unified Code) (730 ILCS 5/1-1-1 *et seq.* (West 2008)) provides for the award of automatic good-conduct credit, meritorious good-conduct credit, and additional good-conduct credit. The Unified Code prescribes the amount of good-conduct credit inmates automatically receive upon incarceration. 730 ILCS 5/3-6-3(a)(2) to 3-6-3(a)(2.6) (West 2008). The Unified Code also permits the director, as a matter of his/her sole discretion, to award meritorious good-conduct credit of up to 180 days "for meritorious service in specific instances." 730 ILCS 5/3-6-3(a)(3) (West 2008). And, inmates may be awarded additional good-conduct credit for participation in educational, vocational, substance abuse, and industry programs. 730 ILCS 5/3-6-3(a)(4) to 3-6-3(a)(4.6) (West 2008). The credit at issue here is the meritorious good-time credit, which is granted at the Director's discretion.

credits. *Brewer v. Peters*, 262 Ill. App. 3d 610, 613 (1994) ("The award of good-conduct time and the decision to consider granting good-conduct time are discretionary under the statute; defendant is not required to grant the time or even consider it."); *Braver*, 311 Ill. App. 3d at 187-89 ("The award of good conduct time and the decision to consider such an award are discretionary by statute; the Director of IDOC is not required to grant the time or even consider it, absent a clear duty to act, which is not present here."); *Helm v. Washington*, 308 Ill. App. 3d 255, 257 (1999) ("The decision to award meritorious good conduct credit to qualifying prisoners is discretionary under section 3-6-3(a)(3). 730 ILCS 5/3-6-3(a)(3) (West 1998). Defendant is not required to grant the credit or even consider it."). As such, the Director had no clear duty to review MGT requests, making it impossible to grant him relief via a *mandamus* petition.

¶ 30 B. *Mandamus* Is Inappropriate Because Pruitt Is Challenging The Suspension Of A Statute, Not An Individual's Failure To Perform Official Duties.

¶ 31 While Pruitt claims to be requesting *mandamus* relief by seeking an ordering directing the Director to use his discretion and review his MGT request, Pruitt has not presented any evidence to show that the that the Director is not performing his official duties in reviewing requests for MGT credit. Rather, Pruitt

argues that *because the Governor suspended the statute that gives the Director authority to act and review MGT requests*, the Director has failed to exercise his discretion. As such, Pruitt is really challenging the suspension of a statute by the Governor, rather than the failure of an individual to perform official duties, thus making *mandamus* an inappropriate vehicle for relief. If we considered Pruitt's *mandamus* claim at face value, Pruitt is asking us to order the Director to act outside any statutorily-vested authority and review his MGT request since there was no statute vesting such authority in the Director at the time Pruitt requested *mandamus* relief.

¶ 32 In *Weaver v. Graham*, 450 U.S. 24 (1981), a case relied on by Pruitt for the proposition that "reducing or eliminating early-release credits for good behavior is an ex post facto law that increases punishment," it is essential to note that the petitioner there was not seeking *mandamus* relief. Instead, the petitioner in *Weaver* was challenging the validity of a Florida statute that modified the amount of "gain time" he was able to receive by operation of law in a *habeas corpus* petition. Further, in finding that the change in the law governing the amount of "gain time" that a prisoner automatically earned by operation of law amounted to an ex post facto law, the Supreme Court explicitly recognized the difference between "gain time"

that a prisoner automatically earned by operation of law, which was at issue in that case, and "gain time" that was discretionary and awarded based on special behavior. Thus, not only is *Weaver* inapplicable here because the petitioner in that case was challenging the validity of a statute and not seeking *mandamus* relief, but the Court there was dealing with sentencing credit that was earned by operation of law and not discretionary sentencing credit that could be awarded for special behavior, which is what we have here.[3] As such, we find that this is not a case where Pruitt is merely requesting that the Director exercise his discretion as Pruitt has not shown any policy of denying credits that amounts to a refusal to exercise that discretion. See *Howell v. Snyder*, 326 Ill. App. 3d 450, 453 (2001). Rather, Pruitt's allegations only indicate a temporary suspension in the

[3] It is well established that the Code of Corrections does not create enforceable rights for inmates beyond those that are constitutionally required, *McNeil v. Carter*, 318 Ill. App 3d 939, 943 (2001), and, accordingly, courts have concluded that prisoners do not have a constitutional right to receive meritorious good conduct credit. See *Parker-Bey v. Taylor*, 2011 WL 837783, at *4 (2011) ("courts typically have found that Illinois law does not give IDOC prisoners a due process liberty interest in meritorious good-time credit"); *United States ex rel. Smith v. Chrans,* 1986 WL 7350, at *1 (1986) ("[T]he loss of opportunity to earn meritorious good-time credits does not implicate any constitutionally protected right."); See *Ivy v. Reed,* 1985 WL 1804, at *2 (1985). Thus, "[t]he decision to award meritorious good conduct credit to qualifying prisoners is discretionary under section 3--6--3(a) (3). *** Defendant is not required to grant the credit or even consider it." *Washington*, 308 Ill. App. 3d at 258.

awarding of MGT credit while the procedures were being revised pursuant to legislation. As such, for all the above reasons, if we were to assume that Pruitt's claim was not moot, we would find that *mandamus* relief was inappropriate and would have affirmed the trial court's ruling on that basis.

¶ 33 CONCLUSION

¶ 34 For the forgoing reasons, because the issues raised by Pruitt are moot, we dismiss Pruitt's appeal.

¶ 35 Appeal dismissed.