

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA

LESLIE L. PURYEAR,

Petitioner,

against Record No. 230688

CHADWICK DOTSON, in his official capacity
as Director of the Virginia Department
of Corrections, et al.,

Respondents.

RESPONDENTS' SUGGESTION OF MOOTNESS

**TO THE HONORABLE CHIEF JUSTICE & JUSTICES OF THE
SUPREME COURT:**

Respondents, by counsel, respectfully submit this suggestion of mootness and request that this Court dismiss as moot the petition for a writ of habeas corpus ad subjiciendum filed by Petitioner Leslie L. Puryear because the Virginia Department of Corrections (“VDOC”) released Puryear on November 9, 2023. He is no longer serving an active term of incarceration to which earned sentence credits may be applied. And because he is no longer detained by the respondent, issuance of the writ would have no effect on Puryear’s rights. In support of this suggestion of mootness and pursuant to Code § 8.01-660, Respondents submit as Exhibit 1 a supplemental affidavit of Donna M. Shiflett (“Supp. Shiflett Aff.”), Manager of VDOC’s Court and Legal

Services Section, which is responsible for computing an offender's sentence(s) and projecting the discretionary parole eligibility date, mandatory parole release date, and good time release date. In addition, and in further support of this suggestion of mootness, Respondents state as follows:

1. Petitioner, Leslie L. Puryear, is a *former* inmate of the VDOC, formerly assigned No. 1387533. Puryear was discharged from VDOC custody on November 9, 2023. Supp. Shiflett Aff. ¶ 4.

2. Petitioner, through counsel, filed this petition for a writ of habeas corpus ad subjiciendum in which Petitioner alleges that he was eligible for immediate release from detention, but had not been released because Respondents had improperly calculated the number of sentencing credits he had earned under Code § 53.1-202.3(A). Pet. 2. Consistent with this Court's orders, Respondents filed a motion to dismiss the petition with this Court on November 6, 2023.

3. Both Puryear's petition and Respondents' motion to dismiss were filed before Puryear was released from VDOC custody. As Puryear was subsequently discharged from VDOC custody on November 9, 2023,

Respondents now submit this suggestion of mootness to apprise the Court that Puryear’s petition should be dismissed as moot.

4. In light of *Prease v. Clarke*, 888 S.E.2d 758, __ Va. __, __ (2023), VDOC has determined that prisoners serving sentences for the inchoate crimes associated with aggravated murder, robbery, and carjacking are not excluded from eligibility for enhanced earned sentencing credits. Consistent with that determination, VDOC released Puryear to the Petersburg Probation and Parole District on November 9, 2023. Supp. Shiflett Aff. ¶ 4. VDOC records show that Puryear “has received all appropriate sentence credits,” has “fully satisfied his active term of incarceration,” and “is no longer in VDOC custody.” Supp. Shiflett Aff. ¶¶ 4–5.

5. In Virginia, the purpose and scope of the writ of habeas corpus is to test the legality of the prisoner’s detention. Code § 8.01-654(A)(1). The only relief available from a writ of habeas corpus is “an order, entered in the petitioner’s favor, interpreting a conviction or a sentence, [that] will, as a matter of law and standing alone, directly impact the duration of a petitioner’s confinement.” *Carroll v. Johnson*, 278 Va. 683, 694 (2009); *Virginia Parole Bd. v. Wilkins*, 255 Va. 419,

420–21 (1998) (noting that a writ of habeas corpus “is not available to secure a judicial determination of any question which, even if determined in the prisoner’s favor, could not affect the lawfulness of his immediate custody and detention”).

6. Puryear’s petition asks this Court to “[o]rder the VDOC to award him earned sentence credits as provided in Va. Code Ann. § 53.1-202.3(B) both prospectively and retroactively as to each of his sentences” and to “order his immediate release.” Pet. 12. Puryear, however, “has received all appropriate sentence credits, and his sentence has been accurately calculated in accordance with applicable Virginia statutes and time computation practices.” Supp. Shiflett Aff. ¶ 5. And because VDOC released Puryear from custody on November 9, 2023, he is not serving an active sentence in VDOC custody. Supp. Shiflett Aff. ¶ 4.

7. Thus, to the extent that Puryear seeks an order directing VDOC to award him additional sentence credits, Puryear does not have an active sentence for which sentence credits could be awarded. Indeed, Puryear has “fully satisfied his active term of incarceration.” Supp. Shiflett Aff. ¶ 4; see Code § 53.1-186.

8. Likewise, to the extent that Puryear seeks an order directing VDOC to release him from custody, VDOC has already released him on November 9, 2023. Accordingly, Puryear has already received the only relief available from a writ of habeas corpus. See *Carroll*, 278 Va. at 694.

9. This Court has consistently held that “a case is moot and must be dismissed when the controversy that existed between litigants has ceased to exist.” *Daily Press, Inc. v. Commonwealth*, 285 Va. 447, 452 (2013); see *E.C. v. Va. Dep’t of Juvenile Justice*, 283 Va. 522, 530 (2012) (“Whenever it appears or is made to appear that there is no actual controversy between the litigants, or that, if it once existed, it has ceased to do so, it is the duty of every judicial tribunal not to proceed to the formal determination of the apparent controversy, but to dismiss the case.” (quoting *Franklin v. Peers*, 95 Va. 602, 603 (1898))).

10. Puryear has now received all the relief he sought in his petition: he has received all the earned sentence credits to which he was entitled, and having fully satisfied his active term of incarceration, VDOC has released him from its custody. Supp. Shiflett Aff. ¶ 4–5.

11. Although a controversy may remain and thereby prevent mootness even after release from custody in a habeas case involving “a concrete and continuing injury, which is a collateral consequence of the conviction,” this rare exception to mootness exists only when the habeas petitioner “challenge[s] the legality of a conviction.” *E.C.*, 283 Va. at 531. As Puryear does not challenge the legality of his convictions, this exception to mootness in the habeas context does not apply here. *See* Pet. 4 n.1 (“[T]his Petition does not challenge Mr. Puryear’s underlying convictions or sentence, and only challenges his continued detention in light of statutory amendments to the earned sentence credit program.”).

12. Because there is no remaining controversy, and Puryear has in fact received all relief contemplated in his petition, this case is moot.

13. Accordingly, this Court should dismiss Puryear’s petition as moot.¹

¹ In accordance with Rule 5:7(a)(5), Respondents submit that this Court may deny and dismiss this petition as a matter of law without requiring an evidentiary hearing. *See* Code § 8.01-654(B)(4); Code § 8.01-695.

WHEREFORE, for the foregoing reasons, the Respondents respectfully request that this Honorable Court dismiss the petition for a writ of habeas corpus ad subjiciendum as moot.

Respectfully submitted,

CHADWICK DOTSON, DIRECTOR
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of November 2023, this document was filed electronically with the Court through VACES, and a true copy of was served by email to counsel for the
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