

SUPREME COURT OF NORTH DAKOTA

Rodriguez v. North Dakota State Penitentiary

Rodriguez, 2014 ND 49 (N.D. 2014) · No. 20130335 · Decided March 11, 2014

SUMMARY

Ricky James Rodriguez appealed the denial of his petition for a writ of mandamus seeking recalculation of his parole eligibility based on credit for time previously served. The North Dakota Supreme Court held the issue was moot because Rodriguez became eligible for parole before the appeal was decided. The court dismissed the appeal without reaching the merits.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Lisa Fair McEvers; Daniel J. Crothers; Dale V. Sandstrom; Carol Ronning Kapsner; Gerald W. VandeWalle, Chief Justice
JURISDICTION	North Dakota
DECIDED	March 11, 2014
DOCKET	20130335
DISPOSITION	dismissed
PROCEDURAL POSTURE	Rodriguez appealed the district court's denial of his petition for a writ of mandamus seeking recalculation of his parole eligibility based on credit for time previously served.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Ricky James Rodriguez v. North Dakota State Penitentiary, Donald Redmann, Interim Warden

TOPICS

- mootness
- appellate procedure
- post-conviction relief
- parole
- statutory interpretation

PRACTICE AREAS

- Appellate procedure
- Criminal procedure
- Post-conviction relief
- Parole

QUESTIONS PRESENTED

1. Whether Rodriguez's appeal concerning the calculation of his parole eligibility was moot after he became eligible for parole.
2. Whether an exception to the mootness doctrine applied because the issue was capable of repetition yet evading review or involved a question of great public interest and the authority of public officials.

HOLDINGS

1. The appeal was moot because Rodriguez's parole eligibility had occurred, making it impossible for the Court to grant him effective relief.
2. The capable-of-repetition-yet-evading-review exception did not apply because any future occurrence of the issue could be reviewed without evading judicial review.
3. The great-public-interest exception did not apply because Rodriguez did not argue or demonstrate that the controversy was one of great public concern.

KEY QUOTATIONS

"When it becomes impossible for the Court to issue relief, no controversy exists and the issue is moot." (¶ 6)

"We do not render advisory opinions and will dismiss an appeal if the issue becomes moot." (¶ 6)

"We hold this appeal is moot, and we dismiss Rodriguez's appeal." (¶ 8)

FACTUAL BACKGROUND

Rodriguez pleaded guilty to aggravated assault in 2008 and received a five-year sentence with two years suspended, followed by probation. After his probation was revoked in 2012, he was resentenced to five years in custody with credit for three years previously served and thirty-nine additional days. He challenged the Department of Corrections and Rehabilitation's calculation of the eighty-five-percent confinement requirement for parole eligibility, but he became eligible for parole on February 13, 2014, while his appeal was pending.

PROCEDURAL HISTORY

Rodriguez pleaded guilty to aggravated assault and was sentenced to five years' custody, with two years suspended and supervised probation. After his probation was revoked, he was resentenced and sought mandamus relief requiring the North Dakota Department of Corrections and Rehabilitation to calculate his parole eligibility using credit for three years and thirty-nine days rather than the time actually served. The district court denied the petition, concluding he had not established a clear legal right to earlier release. While the appeal was pending, Rodriguez became eligible for parole, and the Supreme Court dismissed the appeal as moot.

DISPOSITION

dismissed

CASES CITED

- State v. Grager, 2006 ND 102, ¶ 11, 713 N.W.2d 531

- State v. Patten, 366 N.W.2d 459, 460 (N.D. 1985)
- State v. Hansen, 2006 ND 139, ¶¶ 7-9, 717 N.W.2d 541

OPINION

MCEVERS, J.

Filed 3/11/14 by Clerk of Supreme Court IN THE SUPREME COURT STATE OF NORTH DAKOTA 2014 ND 49 Ricky James Rodriguez, Petitioner and Appellant v. North Dakota State Penitentiary, Donald Redmann, Interim Warden, Respondents and Appellees No. 20130335 Appeal from the District Court of Grand Forks County, Northeast Central Judicial District, the Honorable Lawrence E. Jahnke, Judge.

DISMISSED. Opinion of the Court by McEvers, Justice. David N. Ogren (argued), Grand Forks Public Defender Office, 405 Bruce Ave., Ste. 101, Grand Forks, ND 58201, for petitioner and appellant. Ken R. Sorenson (appeared) and Lori Mickelson (argued), Assistant Attorneys General, Office of Attorney General, 600 E. Boulevard Ave., Dept. 125, Bismarck, ND 58505-0040, for respondents and appellees.

Rodriguez v. N.D. State Penitentiary No. 20130335 McEvers, Justice. [¶1] Ricky James Rodriguez appeals the district court's denial of his petition for writ of mandamus. We do not reach the merits of Rodriguez's argument because we conclude the issue on appeal is now moot.

We therefore dismiss the appeal. I [¶2] On December 17, 2008, Rodriguez pled guilty to aggravated assault, a violation of N.D.C.C. § 12.1-17-02(1), and was sentenced to serve five years in the custody of the North Dakota Department of Corrections and Rehabilitation ("NDDOCR"), with two of the five years suspended, and three years supervised probation following his release. [¶3] On September 6, 2012, Rodriguez's probation was revoked, and he was re-sentenced to five years in the custody of the NDDOCR, with "credit for three (3) years previously served," and thirty-nine days credit.

Originally, the NDDOCR calculated the eighty-five percent required to be served in confinement under N.D.C.C. § 12.1-32-09.1 based on the remaining two years of Rodriguez's sentence but recognized this was an error and recalculated the eighty-five percent based on the actual time Rodriguez spent in custody.

On August 22, 2013, Rodriguez petitioned for a writ of mandamus, asking the district court to order the NDDOCR to recalculate his eligibility for parole, giving him credit for 1,134 days (three years and thirty-nine days) rather than 1,024 days (actual time spent in custody).

On September 4, 2013, the State Penitentiary objected to Rodriguez's petition. On October 9, 2013, a hearing occurred. On October 21, 2013, the district court denied Rodriguez's petition for writ of mandamus, holding Rodriguez failed to establish he has a clear legal right to a release from

the NDDOCR prior to serving the balance remaining of the eighty- five percent, 527 days, as a result of his re-sentencing on September 6, 2012.

The district court concluded the statute was clear and unambiguous. Rodriguez appealed. Rodriguez became eligible for parole on February 13, 2014. [¶4] Rodriguez argues he did not fail to demonstrate he has a clear right to be eligible for release on parole before he has served eighty-five percent of his sentence in confinement as required by N.D.C.C. § 12.1-32-09.1.

Rodriguez claims the district court's order for "credit for three (3) years previously served" means he receives credit for time the district court ordered at re-sentencing regardless of the time he actually served. [¶5] Prior to oral argument, on February 18, 2014, the State Penitentiary notified the Court the issue raised may be moot due to Rodriguez becoming eligible for parole.

On February 20, 2014, Rodriguez responded to the mootness argument. II [¶6] We need not discuss the merits of this case because the issue is moot. "When it becomes impossible for the Court to issue relief, no controversy exists and the issue is moot." *State v. Grager*, 2006 ND 102, ¶ 11, 713 N.W.2d 531. "We do not render advisory opinions and will dismiss an appeal if the issue becomes moot." *Id.* "An appeal becomes moot when by lapse of time or by events occurring prior to our decision this Court is unable to render effective relief." *State v. Patten*, 366 N.W.2d 459, 460 (N.D.

1985). "[A]n appeal of an issue characterized as moot will not be dismissed if it is capable of repetition yet evading review." *State v. Hansen*, 2006 ND 139, ¶ 7, 717 N.W.2d 541. Further, "[a]n appeal of a moot issue also will not be dismissed if it involves a question of great public interest and the power and authority of public officials." *Id.* at ¶ 9. "Public interest" means: [M]ore than mere curiosity; it means something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected.

It does not mean anything so narrow as the interest of the particular localities which may be affected by the matter in question. *Id.* (citation omitted). [¶7] Although the issue raised in this case is capable of repetition, if it arises in the future, it can be reviewed. This Court is not authorized to render purely advisory opinions merely because the issue may arise in the future.

See *Hansen*, 2006 ND 139, ¶ 8, 717 N.W.2d 541. We conclude this dispute involves an issue which is not likely to be repeated without a meaningful opportunity for judicial review, and this appeal is not capable of repetition in a manner that will evade review. While the case clearly involves the power and authority of public officials, Rodriguez has not argued or shown the controversy is one of great public concern.

Under these circumstances, if this Court were to decide the merits of the writ of mandamus, our decision would be purely advisory because Rodriguez became eligible for parole on February 13, 2014. [¶8] We hold this appeal is moot, and we dismiss Rodriguez's appeal. [¶9] Lisa Fair

McEvers Daniel J. Crothers Dale V. Sandstrom Carol Ronning Kapsner Gerald W. VandeWalle,
C.J.

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/north-dakota-supreme-court-of-north-dakota/2014/rodriguez-v-north-dakota-state-penitentiary-3mv8kj14>