IN THE COURT OF APPEALS OF IOWA

No. 22-1126
Filed March 6, 2024

STEPHANIE PAULINE EAKES,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Linn County, Justin Lightfoot, Judge.

Stephanie Eakes appeals the denial of her application for postconviction relief. **AFFIRMED.**

Webb L. Wassmer of Wassmer Law Office, PLC, Marion, for appellant.

Brenna Bird, Attorney General, and Nicholas E. Siefert, Assistant Attorney General, for appellee State.

Considered by Bower, C.J., Ahlers, J., and Vogel, S.J.* Chicchelly, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2024).

VOGEL, Senior Judge.

Stephanie Eakes appeals the denial of her application for postconviction relief (PCR). She argues the district court erred in rejecting her claim that the sentence imposed on her felony conviction should have run concurrent to the sentence imposed on a prior conviction for which she was on parole when she committed the new offense. Also submitted with this appeal for our consideration is the State's motion to dismiss the appeal as moot.

I. Background Facts and Proceedings

In January 2020, Eakes pled guilty in a Linn County case to felony possession of methamphetamine. Following an unreported sentencing hearing, the district court sentenced Eakes to an indeterminate term of imprisonment not to exceed five years. The sentencing order did not specify whether the sentence would run concurrently with or consecutively to a prior conviction in a Washington County case that Eakes was on parole for when she committed the Linn County offense.[1]

Several months later, Eakes filed a pro se PCR application. Therein, Eakes complained her Linn County sentence was being treated as running consecutively to the ten-year sentence in the Washington County case. She asserted: "I had no idea that my ten-year sentence I was approaching discharge on would be turned into a fifteen-year sentence." Eakes acknowledged her sentencing order in the

[1] In its brief, the State assumes the sentencing order was deficient in this regard because the sentencing court had discretion to order either a consecutive or concurrent sentence and the court did not explicitly exercise that discretion. As the State points out and Eakes does not dispute in her reply brief, that issue is not before us.

Linn County case did "not specify consecutive or concurrent," but she claimed it was therefore "a silent order which implies that it is a concurrent sentence."[2]

Trial was held on the application in May 2022. At the time, Eakes was on parole for her state charges and expected to discharge both sentences in December. However, she was being held in the Bremer County Jail on a pending federal charge. In her testimony, Eakes explained she was convicted in the Washington County case in September 2015 and was sentenced to ten years in prison. Then, while she was on parole for that conviction in December 2019, she was picked up on the Linn County charges and ultimately sentenced to five years in prison. By the time she was sentenced in the Linn County case, she was already back in prison for violating parole.

Eakes testified that the "error" made in this case was that her new sentence "should have been concurrent" with the prior sentence and, since it wasn't, "it made [her] discharge date for [the prior sentence] way past what it should have been."[3] Eakes thought the new sentence should have been ordered concurrent because "no one ever told [her] it would be consecutive" and "in the sentencing order it does not specify consecutive or concurrent," which she believed "implies a concurrent

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[2] In a subsequent brief filed by court-appointed counsel, Eakes argued her criminal counsel was ineffective for failing to ensure her sentence was ordered to run concurrently with her prior sentence. The district court ultimately rejected this claim, and Eakes does not reprise it on appeal.

[3] Eakes's time computation sheet from the Iowa Department of Corrections (DOC) shows her initial ten-year sentence started on September 14, 2015, and her original tentative discharge date was March 31, 2020. An initial sixty-two-day credit moved her tentative discharge up to January 29. Then, between 2017 and 2019, various infractions—parole violations, disciplinary actions, and an escape—pushed Eakes's tentative discharge date back to August 25, 2020. Finally, on March 6, 2020, the new five-year sentence was added, which pushed back the tentative discharge date to March 3, 2022.

sentence." But, according to Eakes, prison staff told her that, "because the sentencing order did not specify, . . . it was implied to be consecutive instead of concurrent." Eakes simply asked for her "time to be corrected."

Relevant to this appeal, the court noted it needed to determine whether the DOC had mistreated the sentences as consecutive. The court ultimately found that Iowa Code section 908.10(2) (2019) "indicates that, when a sentencing order is silent, it should be interpreted as being a consecutive sentence to the term imposed for the parole violation." As a result, the court found the DOC's treatment of the Linn County sentence as consecutive to the Washington County sentence was not improper and denied Eakes's PCR application.

Eakes appealed. While the appeal was pending, Eakes filed a motion for judicial notice of two documents on appeal reflecting the judgment in her federal case and her release date from federal prison. The State did not object, and the supreme court granted the motion. In time, the State filed a motion to dismiss the appeal, claiming the appeal is moot because Eakes discharged her state sentences in March 2023.[4] *See State v. Johnson*, No. 16-0976, 2017 WL 2684342, at *2 (Iowa Ct. App. June 21, 2017) (collecting cases on the proposition that, "[g]enerally, discharge of a sentence renders a challenge to the sentence moot").

[4] The State's motion contained various attachments, which Eakes agreed the court could consider in ruling on the motion to dismiss. *See Riley Drive Ent. I, Inc. v. Reynolds*, 970 N.W.2d 289, 296 (Iowa 2022) ("An appellate court may consider matters technically outside the district court record in determining a question of mootness.").

Eakes resisted dismissal. While she agreed she discharged her state sentences, she argued the appeal is not moot because her federal sentence was ordered to run consecutively to her state sentences, so "the start date of her federal sentence depends on the date her state sentences ended." In other words, Eakes claimed a favorable decision on appeal would result in recalculation of when her state sentences ended and, thus, recalculation of when her federal sentence began. So Eakes submitted resolution of the appeal could have a "practical legal effect" on "continuing adverse collateral consequences." Alternatively, she claimed the case fell within the "public-importance exception" to the mootness doctrine.

Ultimately, the supreme court ordered consideration of the motion to dismiss and resistance to be submitted with the appeal and transferred the case to this court for resolution.

II. Mootness

We begin with the State's motion to dismiss the appeal on mootness grounds. Courts generally do not consider moot issues. *In re B.B.*, 826 N.W.2d 425, 428 (Iowa 2013). "Ordinarily, an appeal is moot if the 'issue becomes nonexistent or academic and, consequently, no longer involves a justiciable controversy.'" *Id.* (quoting *State v. Hernandez-Lopez*, 639 N.W.2d 226, 234 (Iowa 2002)). As noted, discharge of a sentence generally renders a challenge to the sentence moot. *See, e.g.*, *Roland v. Iowa Dist. Ct.*, No. 21-1333, 2023 WL 2152634, at *3 (Iowa Ct. App. Feb. 22, 2023) (collecting cases). However, "an appeal is not moot if a judgment left standing will cause the appellant to suffer continuing adverse collateral consequences." *B.B.*, 826 N.W.2d at 429 (holding

"that a party who has been adjudicated seriously mentally impaired and involuntarily committed is presumed to suffer collateral consequences justifying appellate review").

The State's motion to dismiss did not account for Eakes's federal sentence. In resistance, Eakes submits her consecutive federal sentence defeats the mootness argument.[5] Because of the consecutive nature of the sentence, Eakes says "the start date of her federal sentence depends on the date her state sentences end" and, because a miscalculation of her state sentences would extend the start and end of her federal sentence, the appeal is not moot because allowing her miscalculated sentence to stand would subject her to continuing adverse collateral consequences.

But the problem with Eakes's argument is that it assumes too much. As noted, she says "the start date of her federal sentence depends on the date her state sentences end." That argument assumes her separate terms of service in state and federal prison were seamless. The record before us is insufficient to allow us to affirmatively reach such a conclusion. Specifically, Eakes's offender movement summary shows she was paroled on her state charges on April 14, 2021. According to her federal judgment, her offense end date for that charge was October 21, 2021. The movement summary then shows she was detained by a non-Iowa jurisdiction on January 21, 2022, and that detention

[5] Eakes's federal judgment—which was entered on August 9, 2022—shows she pled guilty to distribution of a controlled substance following a conviction for a serious drug felony and was sentenced to 162 months in federal prison, which the judgment entry noted would be served consecutively to both of Eakes's state sentences.

continued through the time of the discharge of Eakes's state sentences in March 2023. Eakes indeed testified at the PCR trial in May 2022 that she was in custody in county jail on the federal charges at that time.

Once Eakes was detained on her federal charges, she presumably started getting credit on the federal sentence, even though she had yet to discharge the state sentences. *See* 18 U.S.C. § 3585 ("A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences . . . as a result of the offense for which the sentence was imposed . . . that has not been credited against another sentence."); *see also Moreland v. United States*, 968 F.3d 655, 658 (8th Cir. 1992) (noting physical incarceration constitutes "official detention" within the meaning of the statute). While the record does show that Eakes's federal charge resulted in a parole violation that extended her state sentences, there is nothing in the record to indicate the time Eakes spent in federal detention in county jail was credited to another sentence. So we have to assume the federal bureau of prisons will give her credit for that time when calculating her federal sentence. *See United States v. Cabrera*, 83 F.4th 729, 740 (9th Cir. 2023) (noting the credit is applied by the bureau when calculating sentence rather than the district court when imposing sentence).

So, at least based on the record before us, it is inadequate to allow us to conclude that the alleged delayed discharge of the state sentences had any effect on the start or end date of Eakes's federal sentence. Eakes's claim of continuing adverse collateral consequences therefore does not overcome mootness. *See Vasquez v. Iowa Dep't of Hum. Servs.*, 990 N.W.2d 661, 668 (Iowa 2023)

(declining to apply mootness exceptions in part due to "inadequate" record); *see also Eimers v. Iowa Dep't of Pub. Safety*, No. 22-0798, 2023 WL 6292243, at *3 (Iowa Ct. App. Sept. 27, 2023) ("While proof to support these assertions might have convinced us to invoke [a mootness] exception, we are not persuaded the bare assertions of a party can bypass mootness under the circumstances.").

That leaves us with the public-importance exception to the mootness doctrine, which allows us "discretion to decide a moot case if 'matters of public importance are presented and the problem is likely to recur.'" *Riley Drive Ent. I, Inc.*, 970 N.W.2d at 298 (quoting *Homan v. Branstad*, 864 N.W.2d 321, 330 (Iowa 2015)). We consider four factors in determining whether to exercise this exception: "(1) the private or public nature of the issue; (2) the desirability of an authoritative adjudication to guide public officials in their future conduct; (3) the likelihood of the recurrence of the issue; and (4) the likelihood the issue will recur yet evade appellate review." *Maghee v. State*, 773 N.W.2d 228, 234 (Iowa 2009) (quoting *Hernandez-Lopez*, 639 N.W.2d at 234).

On our review of these factors, namely the likelihood of recurrence of the issue and its capability of evading review, we opt to address the merits of Eakes's claim on appeal. *See State v. Avalos Valdez*, 934 N.W.2d 585, 589 (Iowa 2019) (applying public-importance exception where issue was "likely to recur" and had "the potential to evade appellate review"); *see also Rhiner v. State*, 703 N.W.2d 174, 177 (Iowa 2005) ("Without deciding whether or not the issues on appeal are moot, we conclude this case falls squarely into the 'capable of repetition but evading review' exception to the mootness doctrine." (citation omitted)).

III. Merits

Eakes argues the district court erred in denying her PCR application on its conclusion that, pursuant to Iowa Code section 908.10(2), her Linn County sentence was properly treated as being consecutive to her Washington County sentence. We review PCR rulings and issues of statutory interpretation for correction of errors at law. *Brooks v. State*, 975 N.W.2d 444, 445 (Iowa Ct. App. 2022).

Section 908.10(2) provides that when a person is convicted and sentenced for a felony committed while on parole, "[t]he new sentence of imprisonment for conviction of a felony shall be served consecutively *with the term imposed for the parole violation*, unless a concurrent term of imprisonment is ordered by the court." (Emphasis added.) Focusing on the foregoing emphasized language, Eakes argues that, because no term was imposed for her parole violation in the Washington County case, the statute does not apply to her. In response, the State argues no term was required because Eakes was deemed revoked under section 908.10(1) by virtue of her felony conviction committed while on parole. We side with the State for the following reasons.

Iowa Code chapter 908 addresses probation and parole violations. It specifically covers the situation of when an individual "is convicted and sentenced to incarceration in this state for a felony committed while on parole." Iowa Code § 908.10(1). When that happens, "the person's parole shall be deemed revoked as of the date of the commission of the new felony offense." *Id.* "The term for which the defendant shall be imprisoned as a parole violator shall be the same as that provided in cases of revocation of parole for violation of the conditions of

parole." *Id.* § 908.10(2). While neither party addresses the import of section 908.9, it provides that, upon revocation of parole, "the violator shall remain in the custody of the [DOC] under the terms of the parolee's original commitment." From there, "[t]he new sentence of imprisonment for conviction of a felony shall be served consecutively with the term imposed for the parole violation, unless a concurrent term of imprisonment is ordered by the court." *Id.* § 908.10(2).

So, under section 908.10(1), once Eakes was convicted and sentenced for a felony committed while on parole, her parole was deemed revoked.[6] From there, the term to be imposed for parole violation would be that which is normally provided in cases of parole revocation, which section 908.9 provides is custody under the original terms of the commitment. While Eakes complains no term for the parole violation was formally imposed,

> revocation occurs by operation of law upon conviction and sentence of incarceration for the new felony offense. Thus, once the court sentences the parolee for the new offense, a second sentence of incarceration comes into play that must be served based on the violation of parole, and the statute addresses how the two sentences will be served.

Rhiner, 703 N.W.2d at 178. Where, as here, the court does not order concurrent sentences, then the statute provides the sentence shall be served consecutively.

Because revocation arose by operation of law and section 908.10(2) is self-executing on what the term for the parole violation will be—service of the original term of commitment—we reject Eakes's claim that section 908.10 does not apply

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[6] This is one of two methods for revocation, the other method being the formal revocation procedures set forth in sections 908.1 through 908.6. *See Rhiner*, 703 N.W.2d at 177 (discussing the "two methods to revoke parole"). So, to the extent Eakes is arguing there was no term imposed following formal revocation procedures, she is correct. But that is not the only method for revocation.

and her corresponding claims that the DOC mistreated her sentences as consecutive and the district court erred in denying her PCR application.[7] That leaves us with her claim that she should receive additional credit on her Linn County sentence. But, because that claim assumes her sentences should have been treated as concurrent, we need not address it.

IV. Conclusion

We affirm the denial of Eakes's PCR application.

AFFIRMED.

[7] In a last-ditch effort in her reply brief, Eakes argues there is no evidence that the requirements of section 908.10(3) and (4) were complied with, so the entirety of section 908.10 cannot apply. But there is also nothing in the record showing those requirements were not complied with. As the petitioning party with the burden of proof in this proceeding, the lack of evidence on this point does not favor Eakes.