

APPENDIX

A

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-7800

MAURO PALACIO,

Petitioner - Appellant,

v.

B. SULLIVAN,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, District Judge. (5:19-hc-02064-FL)

Submitted: July 30, 2020

Decided: August 4, 2020

Before WILKINSON, MOTZ, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Mauro Palacio, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Mauro Palacio seeks to appeal the district court's order dismissing without prejudice his 28 U.S.C. § 2241 (2018) petition. Upon review, we conclude that the appeal is moot.

"The mootness doctrine is a limitation on federal judicial power grounded in the 'case-or-controversy' requirement of Article III of the U.S. Constitution." *United States v. Springer*, 715 F.3d 535, 540 (4th Cir. 2013); *see* U.S. Const. art. III, § 2, cl. 1. "Mootness is a jurisdictional question and thus may be raised *sua sponte* by a federal court at any stage of proceedings." *Springer*, 715 F.3d at 540. "[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the out-come." *Incumaa v. Ozmint*, 507 F.3d 281, 285-86 (4th Cir. 2007) (internal quotation marks omitted). We lack jurisdiction over any portion of an appeal that becomes moot. *Id.*

In his petition, Palacio—a federal prisoner at the time—sought good conduct credits under the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018). Palacio, however, is no longer incarcerated. Overserved prison time does not shorten a defendant's term of supervision. *United States v. Johnson*, 529 U.S. 53, 59 (2000) ("The objectives of supervised release would be unfulfilled if excess prison time were to offset and reduce terms of supervised release. . . . Supervised release fulfills rehabilitative ends, distinct from those served by incarceration."); *United States v. Jackson*, 952 F.3d 492, 498 (4th Cir. 2020) ("Although custodial and supervised release terms are components of one unitary sentence, they serve different purposes. The conditions of a defendant's supervised release are intended to provide the defendant with assistance in transitioning into

community life.” (internal citation omitted)). Therefore, even if Palacio were entitled to good conduct credits, his release from incarceration renders this claim moot.*

Accordingly, we deny Palacio’s motion to appoint counsel and dismiss this appeal as moot. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

* Because Palacio’s petition is moot, the deficiencies in the petition cannot be cured by amendment. *See Bing v. Brivo Sys., LLC*, 959 F.3d 605, 610-11 (4th Cir. 2020). Thus, the district court’s dismissal without prejudice is a final, appealable order.

APPENDIX

B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:19-HC-2064-FL

MAURO C. PALACIO,)
Petitioner,)
v.) ORDER
B. SULLIVAN,)
Respondent.)

Petitioner, a former federal inmate proceeding pro se, filed the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter is before the court for an initial review of the petition pursuant to 28 U.S.C. § 2243, which provides that the court need not seek a response from the respondent when it is clear on the face of the petition that the petitioner is not entitled to relief.

At the time petitioner filed the petition, he was incarcerated at the Federal Correctional Institution in Butner, North Carolina, serving a term of 24 months' imprisonment for violating the terms of supervised release. Petitioner alleges that the Federal Bureau of Prisons ("BOP") has delayed implementation of the First Step Act's provisions directing the BOP to provide additional good conduct sentencing credits for eligible inmates, in violation of the plain meaning of the Act. Petitioner contends that if the BOP recalculated his good time credits consistent with the First Step Act, he would be eligible for immediate release.

Pursuant to § 2241, a federal court may issue a writ of habeas corpus to a federal or state prisoner if the prisoner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3). "[A]ttacks on the execution of a [federal] sentence

are properly raised in a § 2241 petition.” In re Vial, 115 F.3d 1192, 1194 n.5 (4th Cir. 1997) (en banc). A federal prisoner challenges the execution of his sentence when he contests, as here, the BOP’s “administrative rules, decisions, and procedures applied to his sentence.” In re Wright, 826 F.3d 774, 777 (4th Cir. 2016).

Section 102(b) of the First Step Act amended 18 U.S.C. § 3624(b) to provide that federal inmates are eligible to receive up to 54 days of good conduct time for each year of incarceration. See First Step Act of 2018, Pub. L. No. 115-391, § 102(b), 132 Stat. 5194, 5210. However, “the amendments made [to § 3624] by this subsection shall take effect beginning on the date that the Attorney General completes and releases the risk and needs assessment system [as required by § 101(a) of the First Step Act].” See id. at 5213. As petitioner admits in the petition, the Attorney General had not completed the risk and needs assessment at the time he filed the petition. (See DE 1-1 at 5); see also United States v. Lowe, No. 1:15-CR-11-1, 2019 WL 3858603, at *3 (M.D.N.C. Aug. 16, 2019) (stating the risk and needs assessment was completed on July 19, 2019). And contrary to petitioner’s arguments, the delayed effective date applies to all amendments to § 3624 made by subsection 102(b) of the First Step Act, including the amendments related to good conduct time. First Step Act of 2018, § 102(b), 132 Stat. at 5213; see also Martin v. Entzel, No. 3:19-CV-25, 2019 WL 2946074, at *3 (N.D.W. Va. June 7, 2019); White v. BOP, No. 9:19-762-JMC-BM, 2019 WL 2517082, at *2-3 (D.S.C. May 17, 2019); Blake v. BOP, No. 2:19-CV-818-RMG-MGB, 2019 WL 2618194, at *2 (D.S.C. Apr. 23, 2019).¹ Accordingly, petitioner was not

¹ The United States Court of Appeals for the Fourth Circuit has not addressed the effective date for the First Step Act amendments to § 3624(b) in a published opinion.

entitled to additional good conduct credits at the time he filed the petition, and petitioner has not otherwise established he is in custody in violation of the Constitution or laws of the United States.²

Based on the foregoing, the court DISMISSES the petition without prejudice. After reviewing the claims presented in the habeas petition in light of the applicable standard, the court determines that reasonable jurists would not find the court's treatment of any of petitioner's claims debatable or wrong, and none of the issues deserve encouragement to proceed further. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). Accordingly, the court DENIES a certificate of appealability. The clerk is DIRECTED to close this case.

SO ORDERED, this the 14th day of November, 2019.


LOUISE W. FLANAGAN
UNITED STATES DISTRICT JUDGE

² Petitioner also has not alleged in subsequent filings that the BOP miscalculated his good time credits after the effective date of the amendments to § 3624.

APPENDIX

C

FILED: November 17, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7800
(5:19-hc-02064-FL)

MAURO PALACIO

Petitioner - Appellant

v.

B. SULLIVAN

Respondent - Appellee

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Motz, and Judge Keenan.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX

D

U.S. District Court
EASTERN DISTRICT OF NORTH CAROLINA (Western Division)
CIVIL DOCKET FOR CASE #: 5:19-hc-02064-FL

Palacio v. Sullivan
Assigned to: District Judge Louise Wood Flanagan
Case in other court: 19-07800
Cause: 28:2241 Petition for Writ of Habeas Corpus (Federal)

Date Filed: 02/28/2019
Date Terminated: 11/14/2019
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: U.S. Government Defendant

Petitioner**Mauro C. Palacio**

represented by **Mauro C. Palacio**
2271249
Ramsey Custer 1
1100 FM 655
Rossharon, TX 77583
PRO SE

V.

Respondent**B. Sullivan**

Date Filed	#	Docket Text
02/28/2019	<u>1</u>	PETITION for Writ of Habeas Corpus filed by Mauro C. Palacio. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Document in Support, # <u>3</u> Cover Letter, # <u>4</u> Envelope) (Indig, A.) (Entered: 02/28/2019)
02/28/2019	<u>2</u>	MOTION for Leave to Proceed in forma pauperis filed by Mauro C. Palacio. (Indig, A.) (Entered: 02/28/2019)
02/28/2019	<u>3</u>	Prisoner Trust Fund Account Statement filed by Mauro C. Palacio. (Indig, A.) (Entered: 02/28/2019)
02/28/2019	<u>4</u>	Letter regarding case opening sent via US Mail to Mauro C. Palacio at Butner Medium I – F.C.I. (Indig, A.) (Entered: 02/28/2019)
03/04/2019	<u>5</u>	TRUST FUND INFORMATION REQUESTED from Butner trust fund account officer. (Castania, M) (Entered: 03/04/2019)
03/04/2019		Case Submitted to District Judge Louise Wood Flanagan for initial review. As soon as review is completed by the court, an order will enter and the next appropriate step will be taken. (Castania, M) (Entered: 03/04/2019)
03/18/2019		Filing fee: \$ 5.00, receipt number RAL070537. (Indig, A.) (Entered: 03/18/2019)
03/21/2019	<u>6</u>	Prisoner Trust Fund Account Statement by Mauro C. Palacio. (Castania, M) (Entered: 03/21/2019)
06/03/2019	<u>7</u>	Notice of Change of Address to Burnet County Jail (Texas) filed by Mauro C. Palacio. (Attachment: # <u>1</u> Envelope) (Castania, M) (Entered: 06/03/2019)
07/01/2019	<u>8</u>	Letter from petitioner regarding change of address. (Attachment: # <u>1</u> Envelope) (Castania, M) (Entered: 07/01/2019)
08/05/2019	<u>9</u>	Notice of Change of Address to Joe F. Gurney Transfer Facility filed by Mauro C. Palacio. (Attachment: # <u>1</u> Envelope)(Copy of docket sheet mailed to petitioner.) (Castania, M) (Entered: 08/05/2019)
08/29/2019	<u>10</u>	Notice of Change of Address filed by Mauro C. Palacio. (Attachment: # <u>1</u> Envelope) (Indig, A.) (Entered: 08/29/2019)

09/20/2019	<u>11</u>	Notice of Change of Address to Wayne Unit filed by Mauro C. Palacio. (Attachment: # <u>1</u> Envelope) (Castania, M) (Entered: 09/20/2019)
11/14/2019	<u>12</u>	Order Dismissing Case. Signed by District Judge Louise Wood Flanagan on 11/14/2019. (Castania, M) (Entered: 11/14/2019)
11/14/2019	<u>13</u>	CLERK'S JUDGMENT – IT IS ORDERED AND ADJUDGED in accordance with the court's order entered this date, that this action is hereby dismissed without prejudice. Signed by Peter A. Moore, Jr., Clerk of Court on 11/14/2019. Copy of order, judgment, and appellate rights information served on petitioner via U.S. Mail to address as indicated on judgment. (Castania, M) (Entered: 11/14/2019)
12/03/2019	<u>14</u>	MOTION for reconsideration regarding Certificate of Appealability filed by Mauro C. Palacio. (Castania, M) (Entered: 12/03/2019)
12/03/2019		Motion Submitted to District Judge Louise Wood Flanagan: <u>14</u> MOTION for reconsideration regarding Certificate of Appealability. (Castania, M) (Entered: 12/03/2019)
12/03/2019	<u>15</u>	Notice of Appeal filed by Mauro C. Palacio as to <u>13</u> Clerk's Judgment, <u>12</u> Order Dismissing Case. (Attachments: # <u>1</u> Declaration of Inmate Filing, # <u>2</u> Motion Requesting Appeal Counsel, # <u>3</u> Application to Proceed in Forma Pauperis, # <u>4</u> Envelope) (Castania, M) (Additional attachment(s) added on 12/3/2019: # <u>5</u> Certified Inmate Trust Fund Account) (Castania, M). (Entered: 12/03/2019)
12/03/2019	<u>16</u>	ORDER denying <u>14</u> Motion for Reconsideration regarding Certificate of Appealability. Signed by District Judge Louise Wood Flanagan on 12/3/2019. Copy served via US Mail: Mauro C. Palacio 2271249, Wayne Unit, 6999 Retrieve Rd, Angleton, TX 77515. (Castania, M) (Entered: 12/03/2019)
12/04/2019	<u>17</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals regarding <u>15</u> Notice of Appeal. (Castania, M) (Entered: 12/04/2019)
12/04/2019		Assembled Electronic Record on Appeal transmitted to 4th Circuit Court of Appeals regarding <u>15</u> Notice of Appeal. (Castania, M) (Entered: 12/04/2019)
12/06/2019	<u>18</u>	US Court of Appeals Case Number 19-7800 (Cyndi Halupa, Case Manager) as to <u>15</u> Notice of Appeal filed by Mauro C. Palacio. (Indig, A.) (Entered: 12/06/2019)
12/06/2019	<u>19</u>	ORDER of US Court of Appeals as to <u>15</u> Notice of Appeal, filed by Mauro C. Palacio. The court grants leave to proceed in forma pauperis. (Indig, A.) (Entered: 12/06/2019)
06/25/2020	<u>20</u>	Letter from petitioner: "[A]ppellant is requesting the record from the district court to prepare his brief." (Attachment: # <u>1</u> Envelope) (Castania, M) Modified on 6/25/2020 – copy of docket sheet mailed to petitioner in response to letter. (Castania, M) (Entered: 06/25/2020)
06/25/2020		Remark – Petitioner's address updated, as per return address information in letter. (Castania, M) (Entered: 06/25/2020)