Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: August 7, 2023
Certiorari to the Court of Appeals, 2022CA212 District Court, El Paso County, 2021CV233	
Petitioner: Norman Williams, **v.** **Respondents:** Colorado Department of Corrections Time Computation Department and Colorado Department of Corrections.	Supreme Court Case No: 2023SC154
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, AUGUST 7, 2023.

22CA0212 Williams v CDOC 01-19-2023

COLORADO COURT OF APPEALS

DATE FILED: January 19, 2023

Court of Appeals No. 22CA0212
El Paso County District Court No. 21CV233
Honorable Gregory R. Werner, Judge

Norman Williams,

Plaintiff-Appellant,

v.

Colorado Department of Corrections Time Computation Department,

Defendant-Appellee.

JUDGMENT AFFIRMED

Division II
Opinion by JUDGE FREYRE
Welling and Bernard*, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced January 19, 2023

Norman Williams, Pro Se

Philip J. Weiser, Attorney General, Rebekah Ryan, Assistant Attorney General, Denver, Colorado, for Defendant-Appellee

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2022.

OPINION is modified as follows:

Page 6, ¶ 13 currently reads:

In his reply brief, Williams argues that his appeal is not moot pursuant Owens v. Carlson, 2022 CO 22, because (1) the CDOC is free to recalculate his sentence again if the court does not address the merits of his appeal; and (2) the question of whether section 17-22.5-103 violates due process and is unconstitutionally vague is not moot.

Opinion now reads:

In his reply brief, Williams argues that his appeal is not moot pursuant Owens v. Carlson, 2022 CO 33, because (1) the CDOC is free to recalculate his sentence again if the court does not address the merits of his appeal; and (2) the question of whether section 17-22.5-103 violates due process and is unconstitutionally vague is not moot.

¶ 1 Plaintiff, Norman Williams, an inmate in the custody of the Colorado Department of Corrections (CDOC), appeals the district court's judgment dismissing his action. Williams alleged that the CDOC incorrectly calculated his sentence by denying him earned time credits.

¶ 2 We conclude that Williams' claim is moot because no one disputes that the CDOC is now awarding him earned time credits. Consequently, we affirm the district court's judgment.

I. Background

¶ 3 On July 27, 2010, Williams was sentenced to forty-eight years for second degree murder, a class 2 felony. When calculating Williams' parole eligibility date (PED), the CDOC considered section 17-22.5-403(2.5)(a), C.R.S. 2022, which requires that an inmate serve seventy-five percent of his sentence before becoming parole eligible, less any time authorized for earned time. It also considered section 17-22.5-403(3.5)(a), which renders an inmate ineligible for earned time credits if he has a conviction for certain crimes, including second degree murder, and has a prior conviction for a crime that "would have been" a crime of violence in Colorado, as defined in section 18-1.3-406, C.R.S. 2022.

¶ 4 Initially, the CDOC determined that Williams' previous conviction in Louisiana for "aggravated burglary" was a "crime of violence" as defined in section 18-1.3-406 and found Williams ineligible for earned time credits. However, the CDOC changed course and is no longer applying § 17-22.5-403(3.5)(a) to Williams's sentence. It recalculated his sentence and awarded him 1,280 days of earned time back to his incarceration date of July 28, 2010. And it has been awarding him earned time credits since this recalculation.

¶ 5 Williams filed a "Complaint/Motion for Declaratory Judgment" on September 3, 2021. The CDOC moved to dismiss the Complaint under C.R.C.P. 12(b)(5) for failure to state a claim and asserted that Williams's claim was moot because the CDOC was now awarding him earned time credits. In his reply, Williams conceded the issue was moot, but he argued that both of the exceptions to the mootness doctrine applied and that the district court should consider the merits of his claim. The district court granted the CDOC's motion and dismissed Williams' Complaint. This appeal followed.

II. Mootness

¶ 6 Whether an appeal is moot is a question of law that we review de novo. *People v. Garcia*, 2014 COA 85, ¶ 8. An appellate court will decline to render an opinion on the merits of an appeal when a case is moot. *See People v. Abdul*, 935 P.2d 4, 6 (Colo. 1997). An appeal is moot when "our decision will have no practical effect on an actual or existing controversy." *Garcia*, ¶ 9; *see also People v. Devorss*, 277 P.3d 829, 833 (Colo. App. 2011).

¶ 7 Colorado recognizes two exceptions to the mootness doctrine. First, a case will not be dismissed if it represents a controversy capable of repetition yet evading review. *Taxpayers Against Congestion v. Reg'l Transp. Dist.*, 140 P.3d 343, 346 (Colo. App. 2006). Second, a court may consider issues involving a question of great public importance or an allegedly recurring constitutional violation. *Id.*

¶ 8 Issues are capable of repetition when they could, or are likely to, reoccur in the future. *Anderson v. Applewood Water Ass'n*, 2016 COA 162, ¶ 28. They "evad[e] review" when the "time required to complete the legal process will necessarily render each specific

challenge moot." *Id.* (quoting *Rocky Mountain Ass'n of Credit Mgmt. v. Dist. Ct.*, 193 Colo. 344, 345-46, 565 P.2d 1345, 1346 (1977)).

¶ 9 Williams concedes that the CDOC has applied earned time credits to his sentence and is no longer applying section 17-22.5-403(3.5)(a) going forward. However, he urges us to consider the merits of his claim under both exceptions to the mootness doctrine. We are not convinced.

¶ 10 The Colorado Supreme Court has acknowledged that the proper calculation of inmate PEDs is an issue capable of repetition. *Nowak v. Suthers*, 2014 CO 14, ¶ 14. However, unlike the plaintiff in *Nowak*, who was subject to the short time-frame associated with habeas petitions, the issue underlying Williams's claim does not evade review. *See id.* at ¶ 15.

¶ 11 Williams argues that if we do not address the merits of his claim now, some inmates will have to litigate their sentences if they believe the CDOC is improperly categorizing a previous conviction as a "crime of violence" pursuant to section 18-1.3-406 and, in turn, not awarding earned time credits pursuant to 17-22.5-403(3.5). We aren't persuaded because these inmates may challenge the legality of those calculations before their PEDs arrive.

Moreover, the question of whether a prior conviction is a "crime of violence" under section 18-1.3-406 is fact specific, so even if we resolved the merits of Williams's claim, our decision may have little or no bearing on whether the CDOC is correctly applying section 18-1.3-406 to other inmates' sentences. *See, e.g., Busch v. Gunter*, 870 P.2d 586, 588 (Colo. App. 1993) (facts of the inmate's prior Wisconsin conviction, including his possession and threatened use of a gun to commit sexual assault, met Colorado's statutory definition of crime of violence); *Outler v. Norton*, 934 P.2d 922, 925-26 (Colo. App. 1997) (inmate's prior conviction "would have been" a crime of violence in Colorado based upon the facts of the prior conviction, which involved his use of a deadly weapon to commit aggravated assault), *overruled on other grounds by Meredith v. Zavaras*, 954 P.3d 597 (Colo. 1998).

¶ 12 Williams also asserts that his claim is of great public importance and involves recurring constitutional violations. But there is no constitutional right to earned time or to parole. *See Verrier v. Colo. Dep't of Corr.*, 77 P.3d 875, 878 (Colo. App. 2003) (an inmate has no clear right to receive, and the CDOC has no clear duty to grant, earned time credit); *White v. People*, 866 P.2d 1371,

1374 (Colo. 1994) ("There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence."). Thus, we conclude that Williams has not demonstrated that the calculation of his sentence involves a question of great public importance or an allegedly recurring constitutional violation such that it meets an exception to the mootness doctrine.

¶ 13 In his reply brief, Williams argues that his appeal is not moot pursuant *Owens v. Carlson*, 2022 CO 22, because (1) the CDOC is free to recalculate his sentence again if the court does not address the merits of his appeal; and (2) the question of whether section 17-22.5-103 violates due process and is unconstitutionally vague is not moot.

¶ 14 In *Owens*, our supreme court determined that the CDOC's recalculation of an inmate's sentence did not render his appeal moot because (1) "the [C]DOC would be free to change its mind yet again and recalculate Owens' parole eligibility date" at a later date; and (2) the parties disagreed about whether the new calculation method applied to some of Owens' convictions and, as such, that issue was not moot. *Owens*, ¶¶ 24-25.

¶ 15 Although Williams argued generally that his appeal was not moot in his opening brief, he did not cite to *Owens* or argue that his claim was not moot pursuant to the "voluntary cessation" exception, i.e., that without court review a defendant is allowed to "return to its old ways." *See Portley-El v. CDOC*, 2022 COA 86, ¶ 19 (citation omitted). We do not consider arguments raised for the first time in a reply brief. *Scholle v. Erichs*, 2022 COA 87M, ¶ 90. Moreover, because Williams raised the question in his reply brief, the CDOC had no opportunity to address whether Williams' claim was moot even though it voluntarily recalculated his sentence. *See Portley-El*, ¶ 20 (discussing two conditions under which voluntary cessation renders a claim moot).

¶ 16 In his reply brief, Williams also contends that he presented an issue that is not moot — that section 17-22.5-103 violates constitutional due process rights and is unconstitutionally vague. As discussed, Williams did not identify a constitutional question, so we are not persuaded that he has presented an issue that is not moot.

III. Conclusion

¶ 17 The judgment is affirmed.

JUDGE WELLING and JUDGE BERNARD concur.