

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MARK A. CADE,)	
)	
Petitioner,)	
)	
v.)	No. 1:19-cv-02922-JPH-TAB
)	
MARK SEVIER,)	
)	
Respondent.)	

**ORDER GRANTING MOTION TO DISMISS AND
DIRECTING ENTRY OF FINAL JUDGMENT**

Mark Cade’s petition for a writ of habeas corpus challenges his disciplinary conviction in prison disciplinary proceeding NCF 15-06-0071. The respondent moves to dismiss Mr. Cade’s petition because the Indiana Department of Correction has vacated this disciplinary conviction and restored the associated earned credit time. *See* dkts. 13, 13-1.

“[I]n all habeas corpus proceedings under 28 U.S.C. § 2254, the successful petitioner must demonstrate that he ‘is in custody in violation of the Constitution or laws or treaties of the United States.’” *Brown v. Watters*, 599 F.3d 602, 611 (7th Cir. 2010) (quoting 28 U.S.C. § 2254(a)). To be considered “in custody” for purposes of a challenge to a prison disciplinary conviction, the petitioner must have been deprived of good-time credits, *Cochran v. Buss*, 381 F.3d 637, 639 (7th Cir. 2004) (per curiam), or of credit-earning class, *Montgomery v. Anderson*, 262 F.3d 641, 644-45 (7th Cir. 2001).

A case becomes moot, and the federal courts lose subject matter jurisdiction, when a justiciable controversy ceases to exist between the parties. *See Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (“if an event occurs while a case is pending . . . that makes it

impossible for the court to grant ‘any effectual relief whatever’ to a prevailing party, the [case] must be dismissed”) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)); *Honig v. Doe*, 484 U.S. 305, 317 (1988) (grounding mootness doctrine in the Constitution’s Article III requirement that courts adjudicate only “actual, ongoing cases or controversies”). “A case is moot when issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Erie v. Pap’s A.M.*, 529 U.S. 277, 287 (2000) (internal citations omitted).

This action is now moot because 15-06-0071 no longer affects the fact or duration of Mr. Cade’s custody. A moot case must be dismissed for lack of jurisdiction. *Bd. of Educ. of Downers Grove Grade Sch. Dist. No. 58 v. Steven L.*, 89 F.3d 464, 467 (7th Cir. 1996), *cert. denied*, 520 U.S. 1198 (1997). When it is determined that a court lacks jurisdiction, its only course of action is to announce that fact and dismiss the case. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998) (“Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.”) (quoting *Ex parte McCardle*, 7 Wall. 506, 514, 19 L. Ed. 264 (1868)).

The respondent’s motion to dismiss, dkt. [13], is **GRANTED**. Mr. Cade’s petition is **dismissed for lack of jurisdiction**. Final Judgment consistent with this Order shall now issue.

SO ORDERED.

Date: 5/20/2020

Distribution:

MARK A. CADE
146314
NEW CASTLE - CF
NEW CASTLE CORRECTIONAL FACILITY - Inmate Mail/Parcels
1000 Van Nuys Road
NEW CASTLE, IN 47362



James Patrick Hanlon
United States District Judge
Southern District of Indiana

Frances Hale Barrow
INDIANA ATTORNEY GENERAL
frances.barrow@atg.in.gov