

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-574

FLORIDA DEPARTMENT OF
CORRECTIONS and the FLORIDA
COMMISSION ON OFFENDER
REVIEW,

Appellants,

v.

REGINALD A. MONROE,

Appellee.

On appeal from the Circuit Court for Duval County.
Mark Borello, Judge.

December 14, 2020

PER CURIAM.

The trial court erred when it granted the relief sought in Appellee Monroe's petition for writ of habeas corpus without providing the Department of Corrections notice of the petition or subsequent hearing. "[T]he proper respondent in a habeas corpus petition is the party that has actual custody and is in a position to physically produce the petitioner." *Alachua Reg'l Juvenile Det. Ctr. v. T.O.*, 684 So. 2d 814, 816 (Fla. 1996). "When a petition for writ of habeas corpus alleging that the petitioner is entitled to immediate release sets out plausible reasons and a specific factual basis in some detail, the custodian should be required to respond

to the petition.” *Santana v. Henry*, 12 So. 3d 843, 848 (Fla. 1st DCA 2009), *approved*, 62 So. 3d 1122 (Fla. 2011); *see also* Fla. R. Civ. P. 1.630.

Because it was not noticed, the Department did not have an opportunity to advise the trial court on the relevant procedures concerning conditional release. The Department contends that Monroe’s sentence should run beyond the date that would have been the original conclusion of his sentence. It asserts that Monroe was released early on conditional release and the Department then revoked his gain time and denied him credit for time spent on release after he repeatedly violated the terms and conditions of his early release. *See generally Rivera v. Singletary*, 707 So. 2d 326 (Fla. 1998) (finding broad authority to revoke credit for time spent on conditional release when a releasee violates the terms of release). As a result, he can be required to go back to prison and serve the time he was out on conditional release. In practice, this means that a defendant who has been on conditional release can serve time on a sentence past the original end date because they were not actually in prison for all of the original sentence. The Department, as custodian,* should have been given the opportunity to present evidence and argument on whether Monroe’s sentence had run—an issue we do not decide here.

The trial court’s order granting the petition is reversed, along with its order dismissing the Department’s motion to vacate the order. On remand, the trial court must allow the Department to respond to the petition before ruling on it anew.

REVERSED and REMANDED.

LEWIS, NORDBY, and LONG, JJ., concur.

* “The Department of Corrections shall be responsible for the inmates and for the operation of, and shall have supervisory and protective care, custody, and control of, all buildings, grounds, property of, and matters connected with, the correctional system.” § 945.04(1), Fla. Stat. (2019).

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Beverly Brewster, Assistant General Counsel, Department of Corrections, Tallahassee, and Mark Hiers, Assistant General Counsel, Florida Commission on Offender Review, Tallahassee, for Appellants.

No appearance for Appellee Monroe.