

Case Summary

Thomas L. Kessinger appeals the trial court's application of a six-month credit to his three-year sentence for the GED that he earned while incarcerated. Because Kessinger has already served his sentence in this case, we dismiss his appeal as moot.

Facts and Procedural History

In April 2010, the State charged Kessinger with Class D felony possession of marijuana, Class D felony resisting law enforcement, and Class A misdemeanor criminal recklessness. Eventually, Kessinger entered into a "blind" guilty plea for all three counts. Appellant's App. p. 39. According to the plea agreement, the sentences were to run concurrently. *Id.*

In April 2011, the trial court sentenced Kessinger to three years for each Class D felony and one year for the Class A misdemeanor, to be served concurrently, for an aggregate sentence of three years. The trial court awarded Kessinger 366 days for time served plus 366 days of good time credit, for a total of 732 days. Kessinger then requested "the full six-month credit for obtaining a GED while incarcerated." Tr. p. 28; *see also* Ind. Code § 35-50-6-3.3(a). Defense counsel asked the six-month credit to be applied to Kessinger's sentence as follows:

[S]ince he's been incarcerated for over a year and the State has no objection to his six month time cut we would request that he be given two years, six months which would put him at an out date of today.

Id. at 30. The trial court then clarified, "Is that a six month time credit on release or does that, is that equivalent of a twelve month ---." *Id.* The State responded that it was not the equivalent of good time credit but rather was a "straight six months." *Id.* Based on this,

the trial court calculated Kessinger's sentence by subtracting from his 1095-day sentence 732 days for time served and good time credit and 180 days for obtaining his GED. *See* I.C. § 35-50-6-3.3(e) ("Credit time earned by a person under this section is subtracted from the release date that would otherwise apply to the person after subtracting all other credit time earned by the person."). The trial court came up with a balance of 168 days, meaning that Kessinger would have to serve only 84 actual days assuming he continued to earn one day of credit for each day served.¹ Defense counsel did not contest the trial court's application of the educational credit to Kessinger's sentence. *See id.* at 32 ("I believe that's the way they calculate it, Your Honor."). Kessinger now appeals the trial court's application of the six-month credit to his three-year sentence.

Discussion and Decision

Kessinger contends that the trial court erroneously applied the six-month credit he earned for obtaining his GED while incarcerated to his three-year sentence.

Kessinger himself concedes that this issue is "moot" because he has already served his sentence. Appellant's Br. p. 6. "An issue is deemed moot when it is no longer 'live' or when the parties lack a legally cognizable interest in the outcome of its resolution." *Jones v. State*, 847 N.E.2d 190, 200 (Ind. Ct. App. 2006), *trans. denied*. When a defendant has already served his sentence, "the issue of the validity of the sentence is rendered moot." *Irwin v. State*, 744 N.E.2d 565, 568 (Ind. Ct. App. 2001). In addition, when we are unable to provide effective relief upon an issue, the issue is deemed moot

¹ Our math and Kessinger's math, *see* Appellant's Br. p. 6 n.1, are a little different than the trial court's math. Instead of 168 days, we reach a total of 183, which meant Kessinger had 91.5 actual days to serve.

and we will not reverse the trial court's determination where no change in the status quo will result. *Jones*, 847 N.E.2d at 200.

There is, however, an exception to this general rule. A public interest exception may be invoked upon the confluence of three elements: (1) the issue involves a question of great public importance; (2) the factual situation precipitating the issue is likely to recur; and (3) the issue arises in a context which will continue to evade review. *Id.* Notably, Kessinger does not argue that these three elements have been satisfied. Nevertheless, he claims that because the controlling statute, Indiana Code section 35-50-6-3.3(e), has been amended since the Indiana Supreme Court's opinion on this issue, *Miller v. Walker*, 655 N.E.2d 47, 48-49 (Ind. 1995) (holding that educational credit is not subtracted from a defendant's earliest possible release date but rather is subtracted from the defendant's sentence), we should proceed to address the merits and clarify "how educational credit should be applied against a person's sentence." Appellant's Br. p. 11.

We decline Kessinger's invitation to address the moot issue in this appeal. Although Section 35-50-6-3.3 was amended after *Miller*,² Kessinger concedes that the legislature's amendment of the statute discussed in *Miller* to its present-day form yields the same result. *See* Appellant's Br. p. 10-11 ("In reality the current language of the

² Actually, the statute has been amended twice since it was addressed in *Miller*. At the time of *Miller*, Section 35-50-6-3.3 merely provided that a defendant's educational credit time was earned "[i]n addition to any credit time a person earns under section 3 of this chapter and in addition to any reduction of sentence a person receives under IC 35-38-1-23." Ind. Code Ann. § 35-50-6-3.3(a) (West Supp. 1994). While *Miller* was pending on appeal, the legislature amended the statute to provide explicitly "that educational credit be 'subtracted from the period of imprisonment imposed on the person by the sentencing court.'" *Miller*, 655 N.E.2d at 49 n.5 (citing 1995 Ind. Acts 1004, Sec. 7); *see also* P.L. 148-1995, Sec. 7. Then, in 1999, the legislature amended Section 35-50-6-3.3(e) to its present-day form: "Credit time earned by a person under this section is subtracted from the release date that would otherwise apply to the person after subtracting all other credit time earned by the person." P.L. 243-1999, Sec. 3. Section 35-50-6-3.3(e) has remained the same in the intervening years despite numerous amendments to this statute.

statute would yield the same results which one would find if the educational credit was subtracted from the period of imprisonment imposed by the sentencing court.”); *see also Randolph v. Buss*, 956 N.E.2d 38, 41 (Ind. Ct. App. 2011) (citing *Miller*), *trans. denied*.

We therefore dismiss this appeal as moot.

Dismissed.

ROBB, C.J., and NAJAM, J., concur.