

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

ASHLEY DIAMOND,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	5:20-cv-00453-MTT
	:	
TIMOTHY WARD, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**DEFENDANTS’ MOTION TO DISMISS AS MOOT PLAINTIFF’S
CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendants Timothy Ward, Sharon Lewis, Ahmed Holt, Robert Toole, Benjamin Ford, Jack Sauls, Brooks Benton, Grace Atchison, Lachesha Smith, and Rodney Jackson, through counsel, respectfully move to dismiss as moot the following claims for declaratory and injunctive relief in this action: Count I (except as to the claim for money damages), Count IV, Count V, Count VI, Count VII (except as to the claim for money damages), Count VIII, and Count IX (except as to the claim for money damages). The grounds for this motion are set forth in the accompanying brief.

WHEREFORE, Defendants respectfully request that the Court grant this motion and dismiss the referenced Counts and claims for declaratory and injunctive relief from this action. Defendants further ask that Plaintiff’s Motion for Preliminary Injunction (Doc. 50), which has been consolidated with the trial on the merits (Doc. 143), likewise be dismissed as moot.

Respectfully submitted,

Christopher M. Carr 112505
Attorney General

Loretta L. Pinkston-Pope 580385
Deputy Attorney General

s/ Roger A. Chalmers
Roger A. Chalmers 118720
Senior Assistant Attorney General

PLEASE ADDRESS ALL
COMMUNICATIONS TO
Roger A. Chalmers
State Law Department
40 Capitol Square SW
Atlanta, GA 30334
Tel: (404) 458-3220
Fax: (404) 651-5304
Email: rchalmers@law.ga.gov

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Andrea Chinyere Ezie
Paul Henefeld
Elizabeth Littrell
Scott D. McCoy

This 2nd day of August, 2022.

s/ Roger A. Chalmers
Roger A. Chalmers

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Defendants.	:	

**BRIEF IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS AS MOOT
PLAINTIFF’S CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendants Timothy Ward, Sharon Lewis, Ahmed Holt, Robert Toole, Benjamin Ford, Jack Sauls, Brooks Benton, Grace Atchison, Lachesha Smith, and Rodney Jackson, through counsel, respectfully submit this brief in support of their motion to dismiss as moot Plaintiff’s claims for declaratory and injunctive relief.

Plaintiff Ashley Diamond filed the complaint (Doc. 1) and amended complaint (Doc 36) in this civil action while serving a state prison sentence in the custody of the Georgia Department of Corrections (GDC). Her amended complaint seeks, *inter alia*, a preliminary and permanent injunction and related declaratory relief in connection with GDC practices and operations as pertains to her transgender status and to her medical and mental health conditions. (Doc. 36 at 79-81; *see also id.* at 59, 63, 64, 65, 67, 70, 71, 73, 75). Ms. Diamond was released from GDC custody on parole on Monday, August 1, 2022. *See* Exhibit A hereto. As set forth herein, her release from prison moots her claims for declaratory and injunctive relief.

Article III of the Constitution limits the jurisdiction of the federal courts to the consideration of “Cases” and “Controversies.” U.S. Const. art. III, § 2. “The doctrine of mootness is derived from this limitation because an action that is moot cannot be characterized as an active case or controversy.” *Fla. Ass’n of Rehab. Facilities, Inc. v. Fla. Dep’t of Health & Rehab. Servs.*, 225 F.3d 1208, 1217 (11th Cir. 2000) (quoting *Adler v. Duval County Sch. Bd.*, 112 F.3d 1475, 1477 (11th Cir.1997) (citing *Church of Scientology Flag Serv. Org. v. City of Clearwater*, 777 F.2d 598, 604 (11th Cir.1985))).

The Eleventh Circuit has further explained this jurisdictional limitation as follows:

“[A] case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Powell v. McCormack*, 395 U.S. 486, 496, 89 S. Ct. 1944, 1951, 23 L. Ed. 2d 491 (1969). Put another way, “[a] case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.” *Ethredge v. Hail*, 996 F.2d 1173, 1175 (11th Cir. 1993) (citing *United States v. Certain Real & Personal Property*, 943 F.2d 1292, 1296 (11th Cir. 1991)). When events subsequent to the commencement of a lawsuit create a situation in which the court can no longer give the plaintiff meaningful relief, the case is moot and must be dismissed. *See Jews for Jesus, Inc. v. Hillsborough County Aviation Auth.*, 162 F.3d 627, 629 (11th Cir. 1998) (citing *Pacific Ins. Co. v. General Dev. Corp.*, 28 F.3d 1093, 1096 (11th Cir. 1994)). Any decision on the merits of a moot case or issue would be an impermissible advisory opinion. *See, e.g., Hall v. Beals*, 396 U.S. 45, 48, 90 S. Ct. 200, 201-02, 24 L. Ed. 2d 214 (1969) (per curiam).

Fla. Ass’n of Rehab. Facilities, Inc. v. Fla. Dep’t of Health & Rehab. Servs., 225 F.3d at 1217-1218; *see also Coral Springs Street Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1328 (11th Cir. 2004) (“Mootness can occur due to a change in circumstances . . .”).

“An inmate’s release from prison moots claims for injunctive and declaratory relief.” *Diamond v. Owens*, 2015 U.S. Dist. LEXIS 121803, *2 (M.D. Ga. Sept. 14, 2015)

(Treadwell, J.); *see also Coen v. Georgia Dep't of Corr.*, 2018 U.S. Dist. LEXIS 156030, *21 (M.D. Ga. Sept. 13, 2018) (Treadwell, J.).

The following are the Counts in the amended complaint (Doc. 36) and the relief sought in each:

<u>Count</u>	<u>Claim</u>	<u>Relief Sought</u>
Count I	42 U.S.C. § 1983 and Eighth Amendment based on alleged failure to protect	Declaratory and injunctive and money damages
Count II ¹	42 U.S.C. § 1983 and Eighth Amendment based on alleged sexual abuse	Declaratory and injunctive and money damages as against Arneika Smith
Count III	42 U.S.C. § 1983 and Fourteenth Amendment based on alleged privacy violation	Declaratory and injunctive and money damages as against Arneika Smith
Count IV	42 U.S.C. § 1983 and Eighth Amendment based on alleged policy, pattern, or custom relating to facility placements	Declaratory and injunctive
Count V	42 U.S.C. § 1983 and Fourteenth Amendment based on alleged discrimination based on sex, sex stereotype, or transgender status	Declaratory and injunctive
Count VI	42 U.S.C. § 1983 and Fourteenth Amendment based on alleged policy, practice, or custom relating to facility placements	Declaratory and injunctive
Count VII	42 U.S.C. § 1983 and Eighth Amendment based on alleged failure to provide medical care	Declaratory and injunctive and money damages

¹ Counts II and III have been severed into a separate civil action. *See* ECF 114.

Count VIII	42 U.S.C. § 1983 and Eighth Amendment based on alleged policy, custom, or practice relating to treatments for gender dysphoria	Declaratory and injunctive
Count IX	42 U.S.C. § 1983 and Eighth Amendment based on alleged “failure to train and supervise” in relation to safety, medical care, and mental health care for transgender offenders with gender dysphoria	Declaratory and injunctive and money damages

See Doc. 36 at 59, 63, 64, 65, 67, 70, 71, 73, 75.

Because Ms. Diamond has been released from prison and she is no longer in GDC custody, her claims for declaratory and injunctive relief are moot. Accordingly, Defendants ask that the following Counts and claims be dismissed: Count I (except as to the claim for money damages), Count IV, Count V, Count VI, Count VII (except as to the claim for money damages), Count VIII, and Count IX (except as to the claim for money damages). Defendants further ask that Plaintiff’s Motion for Preliminary Injunction (Doc. 50), which has been consolidated with the trial on the merits (Doc. 143), likewise be dismissed as moot.

Respectfully submitted,

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Andrea Chinyere Ezie
Paul Henefeld
Elizabeth Littrell
Scott D. McCoy

This 2nd day of August, 2022.

s/ Roger A. Chalmers
Roger A. Chalmers

STANDARD CONDITIONS UNDER WHICH THIS PAROLE IS GRANTED

THIS CERTIFICATE OF PAROLE WILL BECOME EFFECTIVE ONLY ON THE EFFECTIVE DATE STATED ON THE FRONT AFTER THE FOLLOWING STANDARD CONDITIONS AND ANY SPECIAL CONDITIONS ON THE FRONT ARE AGREED TO BY THE INMATE. VIOLATION OF ANY CONDITION MAY RESULT IN IMMEDIATE ARREST FOLLOWED BY PAROLE REVOCATION.

- 1. **Intervention Plan/Instructions:** I will participate in the development of and comply with a rehabilitation plan designed by my community supervision officer. This plan will require me to work, to be drug tested, and may require me to attend and to pay a reasonable fee for counseling or classes. I will truthfully answer all questions and follow all written and verbal instructions from my community supervision officer or any other community supervision officer or any employee of the Department of Community Supervision or the **State Board of Pardons and Paroles**.
- 2. **Law/ Immediate Notification/Searches:** I will not violate the law of any governmental unit. I will immediately notify my community supervision officer if I am arrested for any offense, including a traffic offense. My community supervision officer or any other community supervision officer may, at any time, conduct a warrantless search of my person, papers, and place of residence, automobile, or any other property under my control.
- 3. **Weapon:** I will not receive, possess, transport, have under my control, attempt to purchase, or obtain transfer of any firearm, ammunition, explosives or other deadly weapons.
- 4. **Leaving State and Absconding:** I will not leave my state of residence, even briefly, or change my residence without first getting permission from my community supervision officer. I will not abscond from parole supervision.
- 5. **Child Support, Restitution, and Fees:** I will support all my children as required by Georgia law, make payments on any restitution, pay a monthly parole supervision fee as established by Parole Board rule, and pay a reasonable fee for electronic monitoring.
- 6. **Education:** If I do not have a high school diploma or its equivalent and am unable to maintain reliable, regular employment, I will attend school to pursue a general education diploma (GED), a high school diploma, or a trade at a vocational/technical school.
- 7. **Terms of Probation:** If serving a split sentence, I will abide by all terms of probation imposed by the sentencing court(s).

ACKNOWLEDGMENT AND CERTIFICATION

I have read or have had read to me the above standard Parole conditions and any special conditions on the front side of this certificate, and fully understand them and agree to comply with them. I hereby waive all extradition rights and process and agree to return to Georgia from any State or Territory of the United States or from the District of Columbia. If it becomes necessary to communicate with my community supervision officer when the officer is not available, I will contact another community supervision officer in the same office or will contact the Department of Community Supervision's Headquarters Office at Fourth Floor, East Tower, Floyd Veterans Memorial Building, 2 Martin Luther King, Jr., Drive, S.E., Atlanta, Georgia 30334. Telephone number (404) 656-0692.

WITHIN 24 HOURS OF MY RELEASE I WILL REPORT TO MY COMMUNITY SUPERVISION OFFICER, EITHER BY PERSONAL VISIT OR BY TELEPHONE.

Ashley Diamond
 PAROLEE ASHLEY ALTON DIAMOND, ZX 751505 7-20-27-22
 DATE

I hereby certify that this Statement of Conditions has been read and explained to the Parolee and he/she has agreed to them.
Coastal State Prison [Signature]
 INSTITUTIONAL OFFICIAL 7/27/22
 DATE



Brian P. Kemp
Governor

GEORGIA DEPARTMENT OF CORRECTIONS

P.O. Box 1529
Forsyth, GA 31029



Timothy C. Ward
Commissioner

Date: 08/01/2022

RE:DIAMOND, ASHLEY ALTON
PAROLE CASE# 751505
GDC ID - 1000290565



Dear Warden:

The attached parole order or conditional release order authorizes the release of the above named inmate.

Be certain that the inmate understands the conditions of his or her release. Three copies of the order should be signed and witnessed. Return one copy to the Department of Corrections, one copy to the inmate and one copy for your files. Provide the inmate with the arrive notice and any other instructions. Release the inmate as directed by the order.

Timothy C. Ward, COMMISSIONER
DEPARTMENT OF CORRECTIONS

BY: 

Kenneth Mantle, Director
Offender Administration

Note: If subject has been moved to another jail, return release documents and provide new jail county and date moved. If subject was released from your jail, return release documents and provide date and reason for release.

** SHOULD RECEIVE RELEASE GRATUITY