[Cite as *State v. Lewis*, 2019-Ohio-2009.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 18CA3660
vs.	:	
JOSEPH LEWIS,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Timothy Young, Ohio Public Defender, and Patrick T. Clark, Assistant State Public Defender, Columbus, Ohio, for appellant.

Jeffrey C. Marks, Ross County Prosecuting Attorney, and Pamela C. Wells, Ross County Assistant Prosecuting Attorney, Chillicothe, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 4-30-19
ABELE, J.

{¶ 1} This is an appeal from a Ross County Common Pleas Court judgment. The trial court determined that Joseph Lewis, defendant below and appellant herein, violated the terms of his community control and sentenced him to serve a ninety-day prison term, but refused to apply jail-time credit to the sentence. Appellant assigns one error for review:

> "THE TRIAL COURT ACTED IN A MANNER CONTRARY TO LAW WHEN IT APPLIED MR. LEWIS'S JAIL-TIME CREDIT TO THE ELEVEN-MONTH PRISON TERM THAT COULD HAVE BEEN IMPOSED UPON VIOLATION OF THE TERMS OF COMMUNITY CONTROL INSTEAD OF THE 90-DAY PRISON

TERM THAT WAS ACTUALLY IMPOSED."

{¶ 2} On January 16, 2018, appellant pled guilty to one count of possession of cocaine, a fifth-degree felony, in violation of R.C. 2925.11. On March 8, 2018, the trial court sentenced appellant to a term of community control with an underlying eleven-month prison term. On June 18, 2018, the state alleged that appellant had violated the terms of his community control.

{¶ 3} On July 9, 2018, the trial court conducted a Final Community Control Sanctions Violation Hearing and (1) found that appellant violated the terms of his community control, and (2) imposed a ninety day prison sentence. When it imposed sentence, the court calculated that appellant had seventy-two days of jail-time credit, but chose to apply the credit to the underlying eleven-month prison term, which it did not impose, rather than apply the credit to the ninety-day sentence that the court actually imposed.

{¶ 4} Appellant timely appealed the trial court's judgment. On August 15, 2018, appellant filed a Motion for Release on Bail and Suspension of Sentence Pending Appeal. The trial court denied appellant's request. Appellant then filed an identical motion in this Court, that we also denied. Consequently, the parties agree that appellant completed his sentence on October 7, 2018, during the pendency of this appeal.

{¶ 5} In his sole assignment of error, appellant asserts that the trial court acted in a manner contrary to law when it applied his jail-time credit to the eleven-month prison term that could have been imposed for a community control violation, rather than applying the jail-time credit to the ninety-day prison term that the court actually did impose. The state, however, argues that the court properly refused to apply appellant's credit to his ninety-day sentence and claims that to do otherwise would be a "nonsensical" interpretation of R.C. 2929.15(B)(1)(c)(I), which permits a trial court to

impose a ninety-day prison term for technical violations of community control. In his reply brief, appellant concedes that issues related to jail-time credit are generally moot upon the completion of a sentence. Appellant further acknowledges that in October 2018 he completed his sentence. Nevertheless, appellant urges this Court to apply an exception to the mootness doctrine and resolve this case on its merits. For the following reasons, however, we conclude that the substantive arguments raised in appellant's assignment of error have been rendered moot due to the fact that he has completed his prison sentence. Accordingly, we do not reach the merits of the assigned error.

{¶ 6} In general, a " 'case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.' " *Los Angeles Cty. v. Davis*, 440 U.S. 625, 631, 99 S.Ct. 1379 (1979); quoting *Powell v. McCormack*, 395 U.S. 486, 496, 89 S.Ct. 1944 (1969). "It is not the duty of the court to answer moot questions, and when [during] pending proceedings * * *, an event occurs, without the fault of either party, which renders it impossible for the court to grant any relief, it will dismiss the petition * * *." *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21, syllabus (1910); *see also Tschantz v. Ferguson*, 57 Ohio St.3d 131, 133, 566 N.E.2d 655 (1991) ("Ohio courts have long exercised judicial restraint in cases which are not actual controversies. No actual controversy exists where a case has been rendered moot by an outside event"). "Conversely, if an actual controversy exists because it is possible for a court to grant the requested relief, the case is not moot, and a consideration of the merits is warranted." *State ex rel. Gaylor v. Goodenow*, 125 Ohio St.3d 407, 2010–Ohio–1844, 928 N.E.2d 728, ¶ 11; *State v. Consilio*, 114 Ohio St.3d 295, 2007–Ohio–4163, 871 N.E.2d 1167, ¶ 7.

{¶ 7} "Generally, the trial court's calculation of jail-time credit can be challenged by way of appeal from the court's judgment." *State v. Feagin*, 6th Dist. Huron No. H–12–014,

2013–Ohio–1837, ¶ 4; citing *Hughley v. Saunders*, 123 Ohio St.3d 446, 2009–Ohio–5585, 917 N.E.2d 270, and *State ex rel. Rudolph v. Horton*, 119 Ohio St.3d 350, 2008–Ohio–4476, 894 N.E.2d 49. "Once a defendant has served his sentence and has been released from prison, however, any error related to the calculation of his jail-time credit is moot." *Id.*; citing *State ex rel. Gordon v. Murphy*, 112 Ohio St.3d 329, 2006–Ohio–6572, 859 N.E.2d 928. "Although this case involves a felony, the issue of jail-time credit is moot once the sentence has been served because this issue relates only to the length of the sentence and not the underlying conviction and, therefore, there is no collateral disability." *Id.*; citing *State v. Strohl*, 6th Dist. Wood No. WD–05–049, 2006–Ohio–1639, ¶ 8, and *State v. Ambriez*, 6th Dist. Lucas No. L–04–1382, 2005–Ohio–5877, ¶ 10; *see also State v. Bogan*, 2nd Dist. Champaign No.2012–CA–34, 2013–Ohio–1920, ¶ 5 ("It is true that an appeal challenging a felony conviction is not moot even if the entire sentence has been satisfied before the matter is heard on appeal. But this rule does not apply if appellant is appealing solely on the issue of the length of his sentence and not on the underlying conviction." (Quotations omitted.)); *State v. Verdream*, 7th Dist. Mahoning No. 02CA222, 2003–Ohio–7284, ¶ 13 ("We are well aware that an appeal challenging a felony conviction is not moot even if the entire sentence has been served before the appeal is decided, because there are many adverse collateral disabilities that accompany a felony conviction even after the sentence has been served. * * * [However,] [i]f an individual has already served his sentence and is only questioning whether or not the sentence was correct, there is no remedy that we can apply that would have any effect in the absence of a reversal of the underlying conviction. * * * Appellant is not challenging the underlying conviction, and therefore, this appeal is now moot."); *State v. Perry*, 4th Dist. Washington No. 01CA35, 2002–Ohio–4822, ¶ 5 ("[W]hen a convicted defendant in a criminal case has * * * completed the

sentence for the offense, an appeal is moot unless evidence is offered from which an inference can be drawn that the defendant will suffer some collateral disability or loss of civil rights from such judgment or conviction.”).

{¶ 8} In the case sub judice, our review of the record reveals that on July 9, 2018, the trial court sentenced appellant to serve a ninety-day prison term. On July 13, 2018, the court filed its judgment entry of sentence and ordered appellant be conveyed to prison to begin his sentence. Appellant concedes that he has completed his sentence. As we point out above, because appellant completed his sentence and does not challenge his underlying conviction, but instead challenges only a sentencing issue, this appeal has been rendered moot.

{¶ 9} Additionally, we reject appellant's invitation to apply an exception to the mootness doctrine. We recognize that courts may address an otherwise moot issue “ ‘where the issues raised are ‘capable of repetition, yet evading review.’ ” *State ex rel. Beacon Journal Publishing Co. v. Donaldson*, 63 Ohio St.3d 173, 175, 586 N.E.2d 101 (1992); quoting *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165, 527 N.E.2d 807, paragraph one of the syllabus (1988). However, this exception “applies only in exceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Id.*; citing *Spencer v. Kemna*, 523 U.S. 1, 17–18, 118 S.Ct. 978 (1998). Further, “there must be more than a theoretical possibility that the action will arise again.” *James A. Keller Inc. v. Flaherty*, 74 Ohio App.3d 788, 792, 600 N.E.2d 736 (10th Dist.1991).

{¶ 10} Many Ohio courts have held that “ ‘the exception to the mootness doctrine, when a

claim is capable of repetition, yet evades review, does not apply to claims for jail-time credit because there is no reasonable expectation an offender will be subject to the same action again.' " *State v. Burns*, 12th Dist. Clermont No. CA2018-03-015, 2018-Ohio-4657, ¶ 21; quoting *State v. Barnes*, 12th Dist. Warren No. CA2015-01-005, 2015-Ohio-3523, ¶ 8; citing *State ex rel. Gordon v. Murphy*, 112 Ohio St.3d 329, 2006-Ohio-6572, ¶ 6. Thus, although appellant argues that this matter is capable of repetition yet evading review, we believe that no reasonable expectation exists that appellant will again be subject to the same action. As both parties indicate, in the case sub judice appellant's community control sanction ended when the trial court revoked his community control and ordered him to serve his prison sentence. *See State v. Filous*, 2017-Ohio-7203, 95 N.E.3d 573, ¶ 10 (4th Dist.) Once again, we decline appellant's invitation to exercise discretionary authority to address this issue under the exception to the mootness doctrine that exists for matters of great public interest.

{¶ 11} Accordingly, because the argument appellant raises in his assignment of error has been rendered moot, we hereby dismiss this appeal.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the APPEAL BE DISMISSED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Hess, J.: Concur in Judgment & Opinion

For the Court,

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Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal.