

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

WILLIAM M. BLAKOVICH, III,

Defendant-Appellant.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 20 CO 0011**

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Criminal Appeal from the  
Court of Common Pleas of Columbiana County, Ohio  
Case No. 19 CR 189

**BEFORE:**

Carol Ann Robb, Cheryl Waite, David A. D'Apolito, Judges.

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**JUDGMENT:**

Affirmed.

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*Atty. Robert Herron*, Prosecutor, *Atty. Tammie Riley Jones*, Assistant Prosecutor,  
Columbiana County Prosecutor's Office, 105 South Market Street, Lisbon, Ohio 44432,  
for Plaintiff-Appellee and

*Atty. Nicholas Cerni*, Cerni Law, LLC, 3685 Stutz Dr. Suite #100, Canfield, Ohio 44406,  
for Defendant-Appellant.

Dated: June 7, 2021

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**Robb, J.**

{¶1} Defendant-Appellant William Blakovich III appeals the decision of the Columbiana County Common Pleas Court denying his motion for jail time credit. For the reasons expressed below, the assignments of error are dismissed as moot and the trial court's decision is affirmed. However, in making this ruling, we do note that there was a miscalculation of jail time credit.

Statement of the Case

{¶2} While he was on probation for a misdemeanor domestic violence conviction, Appellant was charged with a separate domestic violence charge (the underlying charge of the above captioned case) in violation of R.C. 2919.25(A), a fourth-degree felony. The felony domestic violence charge was the result of Appellant assaulting his live-in pregnant girlfriend on April 5, 2019.

{¶3} He was arrested on May 5, 2019, and days later (May 9, 2019), he was sentenced to 120 days in jail for the misdemeanor domestic violence probation violation case. He was indicted on the felony domestic violence charge on May 16, 2019; however, the parties reached a plea agreement. The state agreed to recommend a six-month community control sanction, and if community control was granted it would recommend EOCC anger management and substance abuse counseling. 10/2/19 Plea Hearing Tr.; 10/3/19 Felony Plea Agreement. Appellant agreed to request community control sanctions or a lesser sentence, to proceed immediately to sentencing, and continuation of bond. 10/2/19 Plea Hearing Tr.; 10/3/19 Felony Plea Agreement.

{¶4} The trial court accepted the guilty plea to R.C. 2919.25(A), a felony four, and ordered him to be evaluated by EOCC. The matter was then set for a "Probation/Sentencing" hearing to occur on November 8, 2019. 10/3/19 J.E. At the November 8, 2019 "Probation/Sentencing" hearing, the matter was continued because the court had not yet received the EOCC evaluation. 11/8/19 J.E.

{¶5} The next "Probation/Sentencing" hearing occurred on November 15, 2019. The trial court imposed a community control sanction for a three-year period. 11/15/19

Sentencing Tr. 4. Appellant was placed at EOCC for six months. The court informed Appellant that if he violated any term or condition of EOCC, or did not complete the program, he would be subject to a violation and the court was reserving jurisdiction to impose the possible maximum sentence, which was 18 months and a \$5,000 fine. 11/15/19 Sentencing Tr. 5. The trial court granted him 68 days credit for time previously served in jail plus time awaiting transportation to EOCC. 11/15/19 Sentencing Tr. 7. He was also placed on three years of probation.

{¶16} Thereafter, Appellant was terminated from the EOCC program for contacting and threatening the victim (on February 21, 2020). A probable cause hearing was held on March 2, 2020 due to the state's motion to show cause why Appellant's probation should not be terminated or revoked. 2/24/20 Motion; 2/21/20 J.E. Appellant stipulated to probable cause and waived presentation of evidence; the trial court set the probation violation hearing for March 13, 2020. 3/2/20 J.E.; 3/2/20 Probable Cause Hearing Tr. 5. The state then filed a motion to terminate Appellant's community control. 3/4/20 Motion.

{¶17} At the hearing on the termination motion, Appellant stipulated to the violations of community control. 3/13/20 J.E.; 7/15/20 Probation Violation Hearing Tr. 2. The court then sentenced Appellant to 12 months in prison for the fourth-degree felony domestic violence charge. He was advised that he may be subject to a period of up to three years of post-release control. 3/13/20 J.E.

{¶18} Appellant's counsel did request a seven day time-period to address the issue of jail time credit. 7/15/20 Probation Violation Hearing Tr. 5. However, no motion was filed by counsel. Instead, Appellant filed a pro se motion for jail time credit. He contended he was delivered to state custody on March 19, 2020 and he received 180 days jail time credit. He claimed he was held in Columbiana County Jail for 213 days from May 5, 2019 to December 4, 2019; in EOCC 76 days from December 4, 2019 to February 19, 2020; and in Columbiana County Jail for 28 days from February 19, 2020 to March 19, 2020. He then asked for an additional 137 days of jail time credit. 4/29/20 Motion.

{¶19} The state filed a response opposing the request. 5/15/20 Motion. It contends 175 days was granted and then an additional 5 days for transport. The state

asserted the additional 137 days Appellant alleges he is owed is not permitted because he was serving a jail sentence for a separate case. He was sentenced on May 9, 2019 to 120 days for an unrelated domestic violence charge (probation violation) in case number 2019 CRB 178. It argued R.C. 2967.191(A) only requires confinement for any reason arising out of the offense for which the prisoner was convicted and sentenced and thus, he is only entitled to jail-time credit for confinement that is related to the offense for which he was sentenced. 5/15/20 Motion.

{¶10} The trial court denied the motion for the reasons stated in the state's memorandum. 6/1/20 J.E. On July 6, 2020, Appellant filed a notice of appeal.

First and Second Assignments of Error

"The Trial Court erred in denying Appellant's Motion for Jail Time Credit."

"The Trial Court erred in the calculation of Appellant's Jail Time Credit."

{¶11} The state asserts Appellant's appellate brief indicates he completed his sentence and was released from prison on or about September 9, 2020. The state argues completion of his sentence renders the appeal moot. This mootness argument must be addressed first before any merit argument can be considered.

{¶12} A search of the Ohio Department of Rehabilitation and Correction website confirms Appellant is no longer incarcerated. See *State ex rel. Brown v. Ohio Dept. of Rehab. & Corr.*, 139 Ohio St.3d 433, 2014-Ohio-2348, 12 N.E.3d 1187, ¶ 2 (judicial notice of ODR's Offender Search website).

{¶13} Considering prior case law, those facts render this appeal moot:

Once a defendant has already served his term of incarceration, the merits of arguments relating to his sentence become moot. See *State v. Merritt*, 7th Dist. Jefferson No. 09 JE 26, 2011-Ohio-1468, ¶ 50; *State v. McCall*, 7th Dist. Mahoning No. 03 MA 82, 2004-Ohio-4026, ¶ 7-9; *State v. Johnson*, 2d Dist. Montgomery No. 27140, 2017-Ohio-4323, ¶ 9-10; *State v. McKinnon*, 4th Dist. Ross No. 12CA3337, 2013-Ohio-2324, ¶ 11-13; *State v. Moore*, 8th Dist. Cuyahoga No. 106647, 2018-Ohio-4778, ¶ 27; *State v. Johnson*, 11th Dist. Lake No. 2005-L-208, 2007-Ohio-780, ¶ 7. "The proper response to a moot appeal is the dismissal of the appeal." *State v. McKeever*, 7th Dist. Mahoning No. 17 MA 0038, 2017-Ohio-9387, ¶ 10,

quoting *Freedom Mtge Corp. v. Boston*, 7th Dist. Columbiana No. 14 CO 0036, 2016-Ohio-7016, ¶ 9, citing *Cincinnati Gas & Elec. Co. v. Pub. Util. Comm.*, 103 Ohio St.3d 398, 2004-Ohio-5466, 816 N.E.2d 238, ¶ 28.

*State v. Jones*, 7th Dist. Mahoning No. 18 MA 0096, 2020-Ohio-4033, ¶ 5, quoting *State v. Cline*, 7th Dist. Monroe No. 18 MO 0007, 2019-Ohio-3476, ¶ 7.

{¶14} Specifically, as to a jail time credit argument, we have held that once the defendant has been released from prison, the merits of arguments relating to the trial court's calculation of his jail-time credit become moot. *State v. McKeever*, 7th Dist. Mahoning No. 17 MA 0038, 2017-Ohio-9387, ¶ 8, citing *State ex rel. Gordon v. Murphy*, 112 Ohio St.3d 329, 859 N.E.2d 928, 2006–Ohio–6572, ¶ 6.

{¶15} In *McKeever*, we explained the “capable of repetition, yet evading review” exception to the mootness doctrine was not applicable to justify review of the appeal. This exception occurs when there is a reasonable expectation that the same complaining party will be subject to the same action again. *Id.* at ¶ 9. Since this appeal involves solely the calculation of jail-time credit, and there is no reasonable expectation that Appellant will be subject to this same action again, the entire appeal is moot. See *id.* at ¶ 10 (applying same reasoning).

{¶16} Furthermore, we note that the record does not indicate Appellant is on any type of post release control or community control after completion of his jail term. If he was this could possibly mean the appeal is not moot.

{¶17} Therefore, the assignments of error must be dismissed as moot.

{¶18} In rendering this ruling, we do note that there was miscalculation of jail time credit; the state admitted at oral argument that there was a miscalculation. From the record before this court it appears Appellant started serving 120-day sentence for the probation violation on May 5, 2019, the date of arrest. Thus, the trial court’s credit for 68 days for the time served appears to be short. He was entitled to a couple more days of credit. However, as stated above, Appellant has served his entire sentence and is released. Therefore, any issue with the jail time credit computation is waived and the argument moot.

Conclusion

{¶19} The assignments of error are dismissed as moot; Appellant has already served his term of incarceration and therefore, the merits of arguments relating to his sentence are moot. The trial court's decision is affirmed.

Waite, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error dismissed as moot. Appellant has already served his term of incarceration and therefore, the merits of arguments relating to his sentence are moot. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**