

**FILED: February 12, 2014**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

STEPHEN MICHAEL BURNS,  
Defendant-Appellant.

Marion County Circuit Court  
10C44374

A147455

Dennis J. Graves, Judge.

On respondent's motion to dismiss filed December 12, 2013; and on respondent's petition for reconsideration filed December 12, 2013. Opinion filed November 14, 2013. 259 Or App 410, 314 P3d 288.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Doug M. Petrina, Senior Assistant Attorney General, for respondent's motion to dismiss and respondent's petition for reconsideration.

Before Wollheim, Presiding Judge, and Nakamoto, Judge, and Edmonds, Senior Judge.

PER CURIAM

Motion to dismiss appeal granted and petition for reconsideration denied. Appeal dismissed as moot.

1 PER CURIAM

2 On November 14, 2013, we issued an opinion in which we concluded that  
3 the trial court sentenced defendant based on an erroneously inflated criminal history score  
4 for one of his convictions, and we reversed and remanded for resentencing. *State v.*  
5 *Burns*, 259 Or App 410, 430, 314 P3d 288 (2013). We rejected the state's argument that  
6 the appeal was not ripe, noting that the error would adversely affect defendant should he  
7 be subject to revocation of his probation and that his appeal was his sole opportunity to  
8 assign error to the criminal history score. *Id.* at 419. After the decision, but before the  
9 appellate judgment in this case issued, defendant successfully completed his term of  
10 probation.

11 The state now moves to dismiss the appeal and petitions for  
12 reconsideration. In its motion to dismiss, the state argues that the trial court's use of an  
13 erroneous criminal history score to sentence defendant on one of the convictions no  
14 longer has a practical effect on defendant's rights and, therefore, the appeal has become  
15 moot. We agree that any further action on appeal would have no practical effect on  
16 defendant now that he has completed his probation, and we grant the motion and dismiss  
17 the appeal because it is now moot.

18 Simultaneously, the state filed a motion for relief from default and  
19 extension of time to file a petition for reconsideration in which the state proposed to  
20 again argue that the appeal is moot. The state explained that its time for filing a petition  
21 lapsed because it did not intend to seek reconsideration and instead, while preparing a

1 petition for review in the Supreme Court, discovered that defendant had completed  
2 probation. We allowed the late filing of the petition for reconsideration. However, we  
3 now deny the state's petition as moot in light of the granting of the state's motion to  
4 dismiss and our consequent dismissal of the appeal.

5 Motion to dismiss appeal granted and petition for reconsideration denied.

6 Appeal dismissed as moot.