

No. 09-3979

McIntosh v. Hudson

Ohio reinstated McIntosh's appeal. The Ohio Court of Appeals has now heard, and rejected, McIntosh's claim, *State v. McIntosh*, 2010-Ohio-6471, 2010 WL 5550252 (Ohio App. Dec. 30, 2010); and the time for him to seek review with the Supreme Court of Ohio has passed, *see* Ohio S. Ct. Prac. R. 2.2(A) (requiring appeal within 45 days of decision). Therefore, McIntosh's state appeal has been completed, and the appeal before this court has become moot. *See Hill v. Sheets*, No. 08-4654, 2010 WL 4627896, at *3 (6th Cir. 2010) (holding that when the state fulfilled one of the two options ordered by the district court for habeas relief, the appeal to this court was moot).

The sole reason we dismiss this appeal is that it is now moot and thus immune from review; *Hall v. Beals*, 396 U.S. 45, 48 (1969); whether a right to notice of appeal in these circumstances is "clearly established," however, remains an open question. Because we lack the authority to vacate the district court's now-moot judgment granting habeas relief, we **DISMISS** the appeal for want of jurisdiction.