

RENDERED: JULY 25, 2014; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2012-CA-001992-MR

OTIS DEQUAN MCKINNEY

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE CRAIG Z. CLYMER, JUDGE  
ACTION NO. 11-CR-00284

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION AND ORDER DISMISSING

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BEFORE: ACREE, CHIEF JUDGE; TAYLOR AND VANMETER, JUDGES.

TAYLOR, JUDGE: Otis Dequan McKinney appeals from the September 24, 2012, order of the McCracken Circuit Court which denied him an evidentiary hearing on his motion for shock probation. McKinney also appeals from the October 8, 2012, order which denied his motion for shock probation. Because we

hold that this appeal is moot, we dismiss without considering the merits of McKinney's appellate argument.

In 2012, McKinney entered into a plea agreement in which he pleaded guilty to one count of assault under extreme emotional disturbance and received a recommended sentence of two years. On February 28, 2012, in conformity with the Commonwealth's recommendation, McKinney was sentenced to two years. On September 20, 2012, McKinney filed a motion for shock probation and a motion for an evidentiary hearing. The evidentiary hearing was denied in an order entered on September 24, 2012, and the motion for shock probation was denied in an order entered on October 8, 2012. This appeal follows.

On July 16, 2013, the Commonwealth filed a motion to dismiss this appeal. Therein, the Commonwealth indicated that the appeal had been rendered moot by virtue of McKinney's release from custody. McKinney failed to file a response to the Commonwealth's motion and the motion. A motion panel of this Court considered the motion to dismiss in September 2013 and subsequently passed the motion to this merits panel.

Accordingly, without consideration of the merits, we will address the motion as to whether this appeal is moot.

A 'moot case' is one which seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason cannot have any practical legal effect upon a then existing controversy.

*Winslow v. Gayle*, 172 Ky. 126, 188 S.W. 1059 (1916). After careful review, we have determined that McKinney's release from custody renders this appeal moot.<sup>1</sup>

For the foregoing reasons, it is ORDERED that Appeal No. 2012-CA-001922-MR shall be, and is hereby, DISMISSED.

ALL CONCUR.

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ENTERED

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JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Renèe VandenWallBake  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General

Jeffrey A. Cross  
Assistant Attorney General  
Frankfort, Kentucky

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<sup>1</sup> Additionally, we note that McKinney failed to file a response to the Commonwealth's motion to dismiss the appeal.