

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2014-06-133
 :
 - vs - : OPINION
 : 3/2/2015
 :
 BRANT K. STUTLER, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2013-10-1717

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Neal D. Schuett, 121 West High Street, Oxford, Ohio 45056, for defendant-appellant

HENDRICKSON, J.

{¶ 1} Defendant-appellant, Brant K. Stutler, appeals from his sentence in the Butler County Court of Common Pleas for attempted possession of heroin. For the reasons set forth below, we affirm.

{¶ 2} On December 18, 2013, appellant was indicted on one count of possession of heroin in violation of R.C. 2925.11, a felony of the fifth degree, and one count of possessing drug abuse instruments in violation of R.C. 2925.12, a misdemeanor of the second degree. Following plea negotiations, appellant entered a guilty plea to one count of attempted

possession of heroin in violation of R.C. 2923.02 and R.C. 2925.11(A), a misdemeanor of the first degree.

{¶ 3} On March 27, 2014, the trial court held a sentencing hearing. At this time, appellant was sentenced to 45 days in the Butler County Jail, with credit for time served. Appellant was given until 4:00 p.m. the following day to surrender to the Butler County Jail to serve his sentence. Appellant failed to report to the jail, and a *capias* was issued for his arrest. Appellant was arrested and went before the court on May 15, 2014. At this time, the trial court noted that it was reopening sentencing since a sentencing entry had not been filed in the case. The matter was continued until June 5, 2014, at which time the trial court considered the "principles and purposes of sentencing related to the recidivism and the seriousness factors," appellant's lack of respect for the justice system, and his lack of amenability to community control sanctions before imposing a 110-day jail term, with credit for 48 days of time served.

{¶ 4} Appellant timely appealed his sentence, raising the following assignment of error:

{¶ 5} THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT WHEN IT INCREASED HIS SENTENCE BASED ON ACTIONS THAT OCCURRED AFTER THE COURT HAD ALREADY IMPOSED A SENTENCE IN VIOLATION OF APPELLANT'S SUBSTANTIVE DUE PROCESS RIGHTS.

{¶ 6} Within his sole assignment of error, appellant challenges the trial court's imposition of the 110-day jail sentence. Appellant argues that the trial court violated his substantive due process rights when it increased his jail sentence by an additional 65 days. We do not reach the merits of appellant's argument, as we find his assigned error to be moot.

{¶ 7} This court has previously held that "[a] defendant convicted of a criminal offense must, *where practicable*, seek a stay of sentence in order to defeat a claim of

mootness." (Emphasis sic.) *Middletown v. Allen*, 63 Ohio App.3d 443 (12th Dist.1989), paragraph one of the syllabus. When an appellant completes a misdemeanor sentence without requesting a stay pending appeal and does not offer evidence from which the appellate court could infer that the appellant would suffer collateral disability or loss of civil rights stemming from the misdemeanor conviction, the appeal is moot. *State v. Boone*, 9th Dist. Summit No. 26104, 2013-Ohio-2664, ¶ 7. "Once a person has served the sentence imposed, in the absence of a challenge to the underlying conviction, there is neither a collateral disability nor a loss of civil rights that can be remedied by a modification of the length of that sentence." *Columbus v. Duff*, 10th Dist. Franklin No. 04AP-901, 2005-Ohio-2299, ¶ 12, citing *State v. Wright*, 8th Dist. Cuyahoga No. 83781, 2004-Ohio-4077, ¶ 19.

{¶ 8} In the present case, appellant does not challenge his conviction for attempted possession of heroin. Rather, appellant challenges the length of the sentence imposed for his misdemeanor offense. Appellant was sentenced to a 110-day jail sentence on June 5, 2014, with credit for 48 days of time served. Appellant did not request a stay of his sentence pending appeal. Appellant's official release date was August 6, 2014—62 days after the sentence was imposed. Appellant has, therefore, completed his misdemeanor sentence. Under these circumstances, there is no relief we can provide appellant regarding his challenge to the length of his now-completed sentence. See *Duff* at ¶ 13; *Boone* at ¶ 8; *State v. Wilbert*, 2d Dist. Montgomery No. 26102, 2014-Ohio-3633, ¶ 11.

{¶ 9} Upon review, we do not find the existence of a pending case or controversy on the issue of the length of appellant's sentence. We accordingly conclude, pursuant to App.R. 12(A)(c), that appellant's sole assignment of error is moot and the appeal must be dismissed. See *Wear v. Johnson*, 5th Dist. Guernsey No. 04CA33, 2005-Ohio-2062.

{¶ 10} Appeal dismissed.

PIPER, P.J., and M. POWELL, J., concur.