

[Cite as *State v. Washington*, 2018-Ohio-1231.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

V.

# BOOKER T. WASHINGTON

Defendant-Appellant

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C.A. CASE NO.: 27690

T.C. NO. 17-CRB-4712

(Criminal Appeal from  
Municipal Court)

## OPINION

Rendered on the 30th day of March, 2018.

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DONOVAN, J.

{¶ 1} Defendant-appellant Booker T. Washington appeals his conviction and sentence for violation of a protection order, in violation of R.C. 2919.27(A)(2), a

misdemeanor of the first degree. Washington filed a timely notice of appeal with this Court on August 9, 2017.

{¶ 2} On July 19, 2017, Washington was arrested and taken into custody for violating a protection order. On July 20, 2017, the State filed a complaint in the Municipal Court of Dayton against Washington for violating a protection order. At his arraignment, Washington pled not guilty and the case was set for a trial on August 1, 2017. Washington remained in jail pending trial on a \$7,500.00 bond.

{¶ 3} On the day his trial was to take place, Washington pled guilty to one count of violation of a protection order. The trial court initially ordered a pre-sentence investigation report (PSI). However, after Washington called the judge derogatory names and made incendiary comments, the trial court sentenced him to 180 days in jail, giving him jail-time credit of fourteen days. The trial court did not impose any community control sanctions and waived court costs due to Washington's indigency.

{¶ 4} As a result of the threats made to the municipal court judge, Washington was indicted in the Montgomery County Court of Common Pleas in Case No. 2017-CR-2412 for one count of retaliation, in violation of R.C. 2921.05(A), a felony of the third degree. On October 31, 2017, Washington pled guilty to one count of retaliation, and the trial court sentenced him to eighteen months in prison with ninety days of jail-time credit. On November 21, 2017, Washington was removed from the Montgomery County Jail and transferred to prison to serve his sentence for retaliation.

{¶ 5} Washington now appeals his conviction and sentence for one count of violation of a protection order.

{¶ 6} Washington's sole assignment of error is as follows:

{¶ 7} “THE TRIAL COURT ERRED IN REFERRING DEFENDANT-APPELLANT TO THE PROBATION DEPARTMENT FOR A PRE-SENTENCING INVESTIGATION, THEN IMMEDIATELY REVOKING THE REFERRAL AND FORTHWITH SENTENCING DEFENDANT-APPELLANT TO THE MAXIMUM SENTENCE, THEREBY VIOLATING HIS DUE PROCESS RIGHTS AGAINST VINDICTIVE SENTENCING.”

{¶ 8} In *State v. Berndt*, the Ohio Supreme Court held that “where a defendant, convicted of a criminal offense, has voluntarily paid the fine or completed the sentence for that offense, an appeal is moot when no evidence is offered from which an inference can be drawn that the defendant will suffer some collateral disability or loss of civil rights from such judgment or conviction.” 29 Ohio St.3d 3, 4, 504 N.E.2d 712 (1987), quoting *State v. Wilson*, 41 Ohio St.2d 236, 325 N.E.2d 236 (1975). The burden of presenting evidence that has such a “substantial stake in the judgment of conviction” is upon the defendant. *Wilson* at 237, 325 N.E.2d at 237.

{¶ 9} “A collateral disability is an adverse legal consequence of a conviction or judgment that survives despite the court's sentence having been satisfied or served.” *In re S.J.K.*, 114 Ohio St.3d 23, 2007–Ohio–2621, 867 N.E.2d 408, ¶ 10. “[A] collateral legal disability implies a separate and distinct consequence from the original criminal prosecution, that is, there must be some other effect, adverse to the defendant beyond expected punishment for his current offense.” *State v. McCarty*, 2d Dist. Montgomery No. 20581, 2005–Ohio–4031, ¶ 4.

{¶ 10} Further, a “collateral disability must be a substantial, individualized impairment, and a purely hypothetical statement about what might occur in the future is not sufficient to give viability to an otherwise moot appeal.” *State v. Moore*, 2d Dist.

Montgomery No. 20772, 2005-Ohio-4518, ¶ 14, quoting *State v. Johnson*, 43 Ohio App.3d 1, 3, 538 N.E.2d 1082 (1st Dist.1988). Upon review, we find that Washington will not suffer any collateral disability as a result of his conviction for violation of a protection order. Washington's conviction in the instant case involves a misdemeanor, not a felony. Furthermore, Washington did not request a stay of his sentence. Finally, Washington's sentence for violation of a protection order merged into the sentence imposed for his felony conviction in Case No. 2017-CR-2412. Thus, the 180 days in jail to which Washington was sentenced for violation of a protection order have already been served, and his sentence has been completed for the misdemeanor conviction.

{¶ 11} Because Washington has completed his sentence and because he has presented no evidence from which this Court could conclude he has suffered a collateral legal disability or loss of civil rights, we dismiss Washington's appeal as moot. We therefore need not address the merits of Washington's sole assignment of error.

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WELBAUM, P.J. and HALL, J., concur.

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Hon. Christopher D. Roberts