

[Cite as *State v. Kirk*, 2020-Ohio-696.]

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

STATE OF OHIO

Plaintiff-Appellee

v.

DOMINIQUE A. KIRK

Defendant-Appellant

:
:
:
:
:
:
:
:
:
:
:
:

Appellate Case No. 28353

Trial Court Case No. 2019-CRB-209W

(Criminal Appeal from
Municipal Court)

.....

OPINION

Rendered on the 28th day of February, 2020.

.....

RONALD LEWIS, Atty. Reg. No. 0061980, Assistant Prosecuting Attorney, New Lebanon
Prosecutor's Office, Appellate Division, 195 South Clayton Road, New Lebanon, Ohio
45345

Attorney for Plaintiff-Appellee

JOHN A. FISCHER, Atty. Reg. No. 0068346, 70 Birch Alley, Suite 240, Beavercreek,
Ohio 45440

Attorney for Defendant-Appellant

.....

DONOVAN, J.

{¶ 1} Dominique A. Kirk appeals from an April 3, 2019 judgment entry which found him guilty on his guilty plea of failure to comply with an order or signal of a police officer in violation of R.C. 2921.331(B), a misdemeanor of the first degree. The court sentenced Kirk to 180 days in jail with credit for eight days served.

{¶ 2} Kirk was charged by way of complaint on February 22, 2019 in the Montgomery County Municipal Court in New Lebanon. On April 3, 2019, he entered his guilty plea in exchange for the dismissal of a charge of domestic violence in Montgomery M.C. No. 2018 CRB 1434 and of another charge of failure to comply in Montgomery M.C. No. 2019 CRB 226.

{¶ 3} We have taken judicial notice of the municipal court's website in the instant matter to note that on April 11, 2019, the municipal court issued an order for drug intervention for Kirk at S.T.O.P for 90 days. A subsequent entry on April 29, 2019, reflects that Kirk escaped from S.T.O.P. on April 26, 2019, and he was arrested on the same day. The court then vacated the entry granting S.T.O.P. and ordered Kirk to be returned to jail to serve the balance of his sentence (150 days). Serving 150 days from April 26, 2019, Kirk would have been released on September 23, 2019.

{¶ 4} Kirk asserts three assignments of error herein as follows:

THE TRIAL COURT ERRED WHEN IT SENTENCED MR. KIRK TO
A MAXIMUM JAIL TERM BASED ON UNKNOWN AND UNNAMED
INDIVIDUALS WHO APPARENTLY HAD RUN FROM POLICE AND HIT
BUSES.

THE TRIAL COURT ERRED BY IMPOSING THE MAXIMUM
SENTENCE.

THE TRIAL COURT ERRED WHEN IT FAILED TO PERSONALLY ADDRESS MR. KIRK AND GIVE HIM THE OPPORTUNITY TO SPEAK REGARDING THE SENTENCE.

{¶ 5} Kirk's assignments of error are primarily directed to his sentencing only. Since Kirk has finished serving his jail sentence, we cannot provide any meaningful remedy. See *State v. Robinson*, 2d Dist. Montgomery Nos. 26712, 26713, 2016-Ohio-3277, ¶ 4. "We cannot restore to him any of the time he spent in jail on this conviction." *State v. MacConnell*, 2d Dist. Montgomery No. 25437, 2013-Ohio-4947, ¶ 9. Consequently, this appeal is moot. See *id*; *State v. Kinnison*, 2d Dist. Darke No. 2010 CA 1, 2011-Ohio-6324, ¶ 7; *State v. Money*, 2d Dist. Clark No. 2009 CA 119, 2010-Ohio-6225, ¶ 25.

{¶ 6} Because this appeal is moot, it is dismissed.

.....

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

Copies sent to:

Ronald Lewis
John A. Fischer
Hon. James D. Piergies