

**THE STATE EX REL. GORDON, APPELLANT, v. MURPHY, JUDGE, APPELLEE.**

[Cite as *State ex rel. Gordon v. Murphy*, 112 Ohio St.3d 329, 2006-Ohio-6572.]

*Mandamus — Action for ruling on petition for jail-time credit is moot after a petitioner has been released from prison — Appeal dismissed.*

(No. 2006-1588 — Submitted December 13, 2006 — Decided  
December 20, 2006.)

APPEAL from the Court of Appeals for Summit County, No. CA-23295.

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**Per Curiam.**

{¶ 1} This is an appeal from a judgment dismissing a petition for a writ of mandamus to compel a judge to rule on a pending motion for jail-time credit. Because appellant has now been released from prison, we dismiss this appeal as moot.

{¶ 2} In November 2005, the Summit County Court of Common Pleas convicted appellant, Charles E. Gordon, of cocaine possession, driving while under suspension, and a community-control violation, and the court sentenced him to an aggregate one-year prison term. Appellee, Judge James E. Murphy of the common pleas court, then issued an entry finding that Gordon was entitled to 42 days of jail-time credit. In December 2005, Gordon filed a motion for jail-time credit in which he claimed that Judge Murphy had incorrectly calculated the number of days that he had spent in custody on the charges before the date of sentencing.

{¶ 3} On July 3, 2006, Gordon filed a complaint in the Court of Appeals for Summit County for a writ of mandamus to compel Judge Murphy to rule on his motion for jail-time credit. Gordon claimed that with the additional jail-time

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credit to which he was entitled, “he would have been released on or about June 25, 2006, having fully served his one-year prison term.” Judge Murphy filed a motion to dismiss, and the court of appeals dismissed the petition.

{¶ 4} In his appeal as of right, Gordon asserts that the court of appeals erred in dismissing his petition. Judge Murphy has filed a motion to dismiss this appeal because it is moot.

{¶ 5} Gordon’s mandamus claim lacked merit because the true objective of his claim was to compel Judge Murphy to credit him for jail-time served and to immediately release him from prison before his scheduled September 2006 release date. “Habeas corpus, rather than mandamus, is the proper action to seek” release from prison. *State ex rel. Rowe v. McCown*, 108 Ohio St.3d 183, 2006-Ohio-548, 842 N.E.2d 51, ¶ 4.

{¶ 6} More important, Gordon has been released. Therefore, his “appeal is moot because his sentence has now expired and he has been released from prison.” *Cruse v. Bradshaw*, 108 Ohio St.3d 212, 2006-Ohio-663, 842 N.E.2d 513, ¶ 5. Furthermore, this claim is not “capable of repetition, yet evading review.” *Spencer v. Kemna* (1998), 523 U.S. 1, 17, 118 S.Ct. 978, 140 L.Ed.2d 43; *Larsen v. State* (2001), 92 Ohio St.3d 69, 70, 748 N.E.2d 72. Gordon concedes that there is no reasonable expectation that he will be subject to the same action again.

{¶ 7} Based on the foregoing, we grant Judge Murphy’s motion and dismiss this appeal as moot.

Appeal dismissed.

MOYER, C.J., RESNICK, PFEIFER, LUNDBERG STRATTON, O’CONNOR, O’DONNELL and LANZINGER, JJ., concur.

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J. Alex Morton, for appellant.

January Term, 2006

Sherrí Bevan Walsh, Summit County Prosecuting Attorney, and Richard  
S. Kasay, Assistant Prosecuting Attorney, for appellee.

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