[Cite as *State v. Montavon*, 2013-Ohio-2009.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 12AP-631
v.	:	(C.P.C. No. 07CR-3672)
Thomas G. Montavon,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on May 16, 2013

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

Timothy Young, Ohio Public Defender, and *Stephen A. Goldmeier*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶ 1} Defendant-appellant, Thomas G. Montavon ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas denying his motion for jail-time credit. Because we conclude that the assignments of error asserted in this appeal are moot, we sua sponte dismiss the appeal.

{¶ 2} In May 2007, appellant was indicted for possession of cocaine in Franklin County Court of Common Pleas Case No. 07CR-3672 ("the 2007 case"). Although the record is not before us, it appears that, at the time of the indictment in the 2007 case, appellant was under community control following a guilty plea on a charge of possession of cocaine in Franklin County Court of Common Pleas Case No. 06CR-508 ("the 2006 case"). Ultimately, appellant stipulated to violating his probation in the 2006 case and

pled guilty to the charge in the 2007 case. The trial court restored appellant to probation on the 2006 case and imposed five years of probation on the 2007 case. The trial court applied 160 days of jail-time credit in the 2006 case and granted no jail-time credit in the 2007 case. Appellant's counsel did not object to the assessment of jail-time credit at the sentencing hearing.

{¶ 3} Appellant was subsequently jailed on another charge, and the trial court terminated appellant from probation in the 2006 case as unsuccessful and revoked his probation in the 2007 case. In April 2012, the trial court sentenced appellant to 11 months of imprisonment in the 2007 case and granted 38 days of jail-time credit. Appellant later filed a motion for jail-time credit, asserting that he was entitled to an additional 264 days of jail-time credit in the 2007 case. The trial court denied the motion for jail-time credit, finding that the motion was not well-taken.

{¶ 4} Appellant appeals from the trial court's order denying his motion for jail-time credit, assigning two errors for this court's review:

> [1.] Because the trial court ordered Mr. Montavon held for two different cases but only awarded jail-time credit for one of those cases, that court committed plain error in denying Mr. Montavon's motion for jail-time credit, failing to comply with the unambiguous mandate of Ohio law and denying him equal protection of the law.
>
> [2.] Because Mr. Montavon was being held for two different pending cases, his trial counsel rendered ineffective assistance in failing to object to the court's crediting jail-time to only one of those cases, and the trial court committed plain error in refusing to address that ineffective assistance, in violation of his right to due process and to effective assistance of counsel.

{¶ 5} At oral argument, appellant's counsel indicated that appellant would complete the prison sentence imposed by the trial court in the 2007 case on Thursday, February 14, 2013. This release date appears to be consistent with the sentence of 11 months of imprisonment, with 38 days of jail-time credit imposed by the trial court at the April 23, 2012 resentencing hearing. We have not received any further information from appellant or the state regarding the status of appellant's incarceration; therefore, for

purposes of this appeal, we will proceed in reliance on the statements of appellant's counsel and presume that appellant completed his sentence on February 14, 2013.

{¶ 6} Generally, "[w]here 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." *State v. Wilson*, 41 Ohio St.2d 236 (1975), syllabus. However, because a person convicted of a felony has a "substantial stake in the judgment of conviction" that survives satisfaction of the judgment, "an appeal challenging a felony conviction is not moot even if the entire sentence has been satisfied before the matter is heard on appeal." *State v. Golston*, 71 Ohio St.3d 224 (1994), syllabus. As this court has previously noted, the rationale underlying the *Golston* decision does not apply if an appeal solely challenges the *length* of a sentence rather than the underlying conviction. *Columbus v. Duff*, 10th Dist. No. 04AP-901, 2005-Ohio-2299, ¶ 12. "If an individual has already served his sentence and is only questioning whether or not the sentence was correct, there is no remedy that can be applied that would have any effect in the absence of a reversal of the underlying conviction." *Id*.

{¶ 7} In this case, it appears that appellant has served his entire sentence. Although he was convicted of a felony offense pursuant to his guilty plea, because appellant is not challenging the underlying conviction, the assignments of error asserted in this appeal are moot.

{¶ 8} A court may hear an appeal when a case is moot if the issues raised in the appeal are "capable of repetition, yet evading review." *State ex rel. Plain Dealer Pub. Co. v. Barnes*, 38 Ohio St.3d 165 (1988), paragraph one of the syllabus. Appellant urges us to rule on his assignments of error under this exception. However, "[t]his exception applies only in exceptional circumstances in which the following two factors are present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231 (2000). The first factor may be present in this case because appellant completed his sentence before resolution of his appeal. However, appellant has failed to

demonstrate a reasonable expectation that he will be subject to the same action again. *Duff* at ¶ 14; s*ee also Ridgeway v. State Med. Bd.*, 10th Dist. No. 06AP-1197, 2007-Ohio-5657, ¶ 13 ("At best, Dr. Ridgeway has demonstrated only that a summary suspension [of his medical license] does not exist long enough for a trial court to review it. He has not come forth with any evidence establishing that he expects the Board to issue a summary suspension against his license again."). *Compare State ex rel. Dispatch Printing Co. v. Geer*, 114 Ohio St.3d 511, 2007-Ohio-4643, ¶ 9-13 (concluding that there was a reasonable expectation that a trial judge would subject newspaper to comparable orders in the future barring it from taking photographs of a juvenile's face during a plea hearing). Therefore, the exception does not apply to the present appeal.

{¶ 9} For the foregoing reasons, we conclude that appellant's two assignments of error are moot, and we sua sponte dismiss the appeal.

Appeal sua sponte dismissed.

KLATT, P.J., and SADLER, J., concur.

———————————