

[Cite as *State v. Johnson*, 2017-Ohio-4323.]

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

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 27140
	:	
v.	:	T.C. NO. 16CRB2842
	:	
BRIAN K. JOHNSON	:	(Criminal Appeal from
	:	Municipal Court)
Defendant-Appellant	:	
	:	

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**OPINION**

Rendered on the 16<sup>th</sup> day of June, 2017.

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DONOVAN, J.

{¶ 1} Defendant-appellant Brian K. Johnson appeals his conviction for one count of assault, in violation of R.C. 2903.13, a misdemeanor of the first degree. Johnson filed

a timely notice of appeal with this Court on June 3, 2016. Initially, we note that since Johnson has completed serving the imposed jail sentence, there is no relief which we can provide on the issues raised in his appeal. This renders his appeal moot.

{¶ 2} After a bench trial held on May 17, 2016, Johnson was found guilty of one count of assault. The trial court imposed a sentence of 180 days in jail, the maximum sentence for a misdemeanor of the first degree. Johnson also received credit for fourteen days already served, for an aggregate sentence of 166 days in jail. The record establishes that the trial court did not impose fines or court costs.

{¶ 3} It is from this judgment that Johnson now appeals.

{¶ 4} Johnson presents the following assignments of error on appeal:

{¶ 5} “THE TRIAL COURT ERRED WHEN IT FAILED TO COMPLY WITH THE SENTENCING CRITERIA FOR MISDEMEANORS SET FORTH IN R.C. 2929.22.”

{¶ 6} “DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE COURT IMPOSED [THE] MAXIMUM SENTENCE FOR [A] MISDEMEANOR OFFENSE WITHOUT CONSIDERING THE APPROPRIATE STATUTORY CRITERIA.”

{¶ 7} “DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE COURT BASED ITS SENTENCING ON STATEMENTS MADE BY THE PROSECUTOR THAT WERE NOT SUPPORTED BY TESTIMONY OR EVIDENCE ON THE RECORD.”

{¶ 8} In the instant case, the record establishes that Johnson was booked into the Montgomery County Jail on May 5, 2016. Having been sentenced to 180 days in jail, Johnson’s sentence would have been scheduled for completion before the parties even finished their briefing in this appeal. In arguing that the appeal is moot, the State represented in its brief that Johnson “has finished serving his jail sentence” and had been

“released from the jail on October 15, 2016,” with the reason listed for his release being “time served.” Appellant did not file a reply brief arguing to the contrary.<sup>1</sup>

{¶ 9} Johnson's assignments of error are directed to the jail sentence only. Even if one of the assignments of error has merit, because Johnson has finished serving his jail sentence, we cannot provide any meaningful remedy. See *State v. Robinson*, 2d Dist. Montgomery No. 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.

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

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FROELICH, J. and WELBAUM, J., concur.

Copies mailed to:

Matthew Kortjohn  
Misty M. Connors  
Hon. Deirdre E. Logan

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<sup>1</sup>This Court has confirmed that Johnson was released from the Montgomery County Jail on October 15, 2016, and is therefore, no longer an inmate.