

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

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| STATE OF OHIO, | : | |
| Plaintiff-Appellee, | : | |
| v. | : | Case No. 13CA16 |
| TORREY T. SWAIN, | : | <u>DECISION AND</u> |
| Defendant-Appellant. | : | <u>JUDGMENT ENTRY</u> |
| | | RELEASED 03/23/2015 |

APPEARANCES:

Brian A. Smith, Barberton, Ohio, for Appellant.

James E. Schneider, Washington County Prosecuting Attorney, and Alison L. Cauthorn, Washington County Assistant Prosecuting Attorney, Marietta, Ohio, for Appellee.

Hoover, P.J.

{¶ 1} Defendant-appellant, Torrey T. Swain, appeals the sentence imposed by the Washington County Common Pleas Court after he pleaded guilty to one count of trafficking in drugs, a felony of the fourth degree, in violation of R.C. 2925.03(A)(2) and (C)(4)(c). For the reasons that follow, we dismiss this appeal as moot.

{¶ 2} Swain was indicted by a Washington County grand jury for three counts of trafficking in drugs, each count noting that the offenses were committed in the vicinity of a juvenile, and each felonies of the third degree in violation of R.C. 2925.03. On October 22, 2012, Swain was transported from the Mansfield Correctional Institution, where he was serving a prison sentence in an unrelated case, to the Washington County Jail for his initial appearance on the charges contained in the indictment. Swain’s arraignment took place on October 24, 2012,

and thereafter, he continued to be held at the Washington County Jail. On November 20, 2012, Swain was returned to the Mansfield Correctional Institution.

{¶ 3} On January 7, 2013, following the expiration of his prison sentence in the unrelated case, Swain was returned to the Washington County Jail. Two days later, Swain posted bond and was released from jail. On January 28, 2013, Swain pleaded guilty to one count of trafficking in drugs, with the language “in the vicinity of a juvenile” removed, a felony of the fourth degree. The two other counts of the indictment were dismissed. Swain was not immediately sentenced, but instead, the trial court ordered that a presentence investigation and report be completed. Bond was continued pending sentencing; and Swain was not taken into custody.

{¶ 4} Sentencing hearings were conducted on March 21 and March 22, 2013. At the hearings, the trial court indicated that it would be sentencing Swain to a prison term, but the parties could not agree as to how much jail-time credit Swain should receive. The parties and the trial court agreed that the jail-time credit listed in the presentence report was inaccurate. The parties also stipulated to a timeline¹ regarding the dates that Swain had been in jail and prison during the pendency of the case, but differed on their calculation of jail-time credit. Ultimately, the trial court sentenced Swain to 17 months of incarceration and credited him with 35 days of jail-time served plus all days held in county jail from March 22, 2013, until his transportation to the state institution. The sentence was reduced to entry filed April 2, 2013, and Swain filed a timely notice of appeal.

{¶ 5} On appeal, Swain asserts the following assignment of error:

The trial court erred by not granting Appellant jail time credit in accordance with Ohio Revised Code sections 2949.08 and 2967.191.

¹ The timeline was filed with the Clerk of Courts and is a part of the appellate record.

{¶ 6} In support of his sole assignment of error, Swain contends that he should have been awarded an additional 47 days of jail-time credit for the period of his incarceration at Mansfield Correctional Institution from November 20, 2012 to January 6, 2013. Specifically, Swain contends that during that 47-day period of incarceration he was being held in lieu of bond in the instant case, in addition to the sentence received in the unrelated case. Thus, he claims that the 47-day period of incarceration “arose from the charges pending in this case” and should be credited against his sentence. *See* R.C. 2949.08(C)(1) and R.C. 2967.191.

{¶ 7} While this appeal was pending, it appears that Swain completed his prison sentence. There is no indication from the record that Swain requested a stay of execution of his prison sentence pending appeal. Rather, a return receipt of a warrant to convey indicates that Swain was transported to the Correctional Reception Center in Orient, Ohio, on April 12, 2013. Thus, if we were to subtract the jail-time credit that was actually ordered by the trial court, Swain would have completed the sentence on or about July 18, 2014.^{2,3}

{¶ 8} “Generally, the trial court’s calculation of jail-time credit can be challenged by way of appeal from the court’s judgment.” *State v. Feagin*, 6th Dist. Huron No. H-12-014, 2013-Ohio-1837, ¶ 4, citing *Hughley v. Saunders*, 123 Ohio St.3d 446, 2009-Ohio-5585, 917 N.E.2d 270, and *State ex rel. Rudolph v. Horton*, 119 Ohio St.3d 350, 2008-Ohio-4476, 894 N.E.2d 49.

“Once a defendant has served his sentence and has been released from prison, however, any error

² Swain had accumulated 56 days of jail-time credit (35 ordered by trial court plus 21 while awaiting transport to prison). The 17 months between April 12, 2013, and September 12, 2014, contain 518 days (including the end date). The days in the sentence (518) minus the credited days (56) equals actual prison time of 462 days. Four hundred and sixty-two days after April 12, 2013, is July 18, 2014.

³ A staff member of this Court also contacted the Ohio Department of Rehabilitation and Correction (“ODRC”) via telephone on November 24, 2014, and was told that Swain was released on June 8, 2014. Swain was purportedly released upon the expiration of his term, and not on other grounds such as judicial release. This Court also ordered that the parties file memoranda regarding the status of Swain’s sentence and imprisonment. Swain’s appellate counsel informed this Court that he believed Swain’s “sentence has been carried out in full, and not subject to judicial release or another form of early release.” However, counsel was not able to contact Swain, despite attempts to do so, to verify his status. Appellee informed the Court that it believed Swain to be released based upon an offender search made on the ODRC website and its belief that Swain’s sentence had been completely served.

related to the calculation of his jail-time credit is moot.” *Id.*, citing *State ex rel. Gordon v. Murphy*, 112 Ohio St.3d 329, 2006-Ohio-6572, 859 N.E.2d 928. “Although this case involves a felony, the issue of jail-time credit is moot once the sentence has been served because this issue relates only to the length of the sentence and not the underlying conviction and, therefore, there is no collateral disability.” *Id.*, citing *State v. Strohl*, 6th Dist. Wood No. WD-05-049, 2006-Ohio-1639, ¶ 8, and *State v. Ambriez*, 6th Dist. Lucas No. L-04-1382, 2005-Ohio-5877, ¶ 10; *see also State v. Bogan*, 2nd Dist. Champaign No. 2012-CA-34, 2013-Ohio-1920, ¶ 5 (“It is true that an appeal challenging a felony conviction is not moot even if the entire sentence has been satisfied before the matter is heard on appeal. But this rule does not apply if appellant is appealing solely on the issue of the length of his sentence and not on the underlying conviction.” (Quotations omitted.)), *State v. Verdream*, 7th Dist. Mahoning No. 02CA222, 2003-Ohio-7284, ¶ 13 (“We are well aware that an appeal challenging a felony conviction is not moot even if the entire sentence has been served before the appeal is decided, because there are many adverse collateral disabilities that accompany a felony conviction even after the sentence has been served. * * * [However,] [i]f an individual has already served his sentence and is only questioning whether or not the sentence was correct, there is no remedy that we can apply that would have any effect in the absence of a reversal of the underlying conviction. * * * Appellant is not challenging the underlying conviction, and therefore, this appeal is now moot.”), and *State v. Perry*, 4th Dist. Washington No. 01CA35, 2002-Ohio-4822, ¶ 5 (“[W]hen a convicted defendant in a criminal case has * * * completed the sentence for the offense, an appeal is moot unless 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.”).

{¶ 9} Because Swain has already completed his sentence and is not challenging the underlying conviction, but rather only a sentencing issue, this appeal is moot. Accordingly, we dismiss this appeal.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the APPEAL BE DISMISSED. Appellant shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to [Rule 27 of the Rules of Appellate Procedure](#).

Harsha, J.: Concurs in Judgment and Opinion.

McFarland, A.J.: Concurs in Judgment Only.

For the Court

By: _____
Marie Hoover, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.