

[Cite as *State v. Adams*, 2005-Ohio-3837.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 85267

STATE OF OHIO

Plaintiff-appellee

vs.

NATE ADAMS

Defendant-appellant

JOURNAL ENTRY

AND

OPINION

DATE OF ANNOUNCEMENT
OF DECISION:

JULY 28, 2005

CHARACTER OF PROCEEDING:

Criminal appeal from Common
Pleas Court, Case No. CR403324

JUDGMENT:

Appeal dismissed.

DATE OF JOURNALIZATION:

APPEARANCES:

For plaintiff-appellee:

WILLIAM D. MASON, ESQ.
CUYAHOGA COUNTY PROSECUTOR
BRIAN M. MCDONOUGH, ESQ.
Assistant County Prosecutor
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

For defendant-appellant:

ROBERT L. TOBIK, ESQ.
CUYAHOGA COUNTY PUBLIC DEFENDER
NOELLE A. POWELL, ESQ.
Assistant County Public Defender
1200 West Third Street, N.W.
100 Lakeside Place
Cleveland, Ohio 44113

KARPINSKI, J.:

{¶ 1} Defendant appeals the sentence imposed by the trial court. For the reasons that follow, we dismiss this appeal as moot.

{¶ 2} On July 21, 2004, defendant pled guilty to amended indictments in two cases: Case No. CR-380201, possession of drugs¹ in violation of R.C. 2925.11 and Case No. CR-403324, preparation of drugs for sale² in violation of R.C. 2925.07. Both offenses are fifth degree felonies.

{¶ 3} Defendant was sentenced on August 18, 2004. He received a six-month prison term in each case. Both sentences were run concurrent to one another. After sentencing, defendant filed this appeal in which he presents a single assignment of error:

THE TRIAL COURT ERRED BY IMPOSING A PRISON SENTENCE FOR A FELONY OF THE FIFTH DEGREE WITHOUT FIRST MAKING THE PROPER FINDINGS.

{¶ 4} Defendant argues that his six-month sentence is infirm because the trial court failed to make the required findings set forth in R.C. 2929.13(B). Before addressing the merits of defendant's sole assignment of error, however, we must first determine the viability of this appeal.

"Where 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

¹Twenty-one (21) rocks of crack cocaine.

²Sixty rocks (60) of crack cocaine.

defendant will suffer some collateral disability or loss of civil rights from such judgment or conviction."

State v. Hardwick, Cuyahoga App. No. 83604, 2004-Ohio-5857, at ¶5, citing *State v. Wilson* (1975), 41 Ohio St.2d 236, 325 N.E.2d 236, at syllabus.

{¶ 5} When a defendant has already served his sentence, any issue related to that sentence on appeal is moot. *State v. Barcomb*, Cuyahoga App. No. 80196, 2002-Ohio-4435, citing *State v. Pompei* Cuyahoga App. No. 79541, 2001 Ohio App. LEXIS 5052, at *2-3.

{¶ 6} "If an individual has already served his sentence, there is no collateral disability or loss of civil rights that can be remedied by a modification of the length of the sentence in the absence of a reversal of the underlying conviction. *** [And] no relief can be granted by this court subsequent to the completion of the sentence if the underlying conviction itself is not at issue." *State v. Bostic*, Cuyahoga App. No. 84842, 2005-Ohio-2184, at ¶22.

{¶ 7} In the case at bar, defendant is not appealing any issue related to his underlying conviction. He is appealing only the length of the sentences he received.

{¶ 8} Defendant received two concurrent six-month sentences. He started serving those sentences on August 23, 2004. According to the state, defendant completed his six-month term on February 10, 2005. Following *Hardwick*, therefore, because defendant has

already served his sentence, his sole assignment of error, which is related exclusively to the sentences he received, is now moot.

{¶ 9} Accordingly, this appeal is dismissed.

It is ordered that appellee recover of appellant its costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANTHONY O. CALABRESE, JR., J., AND

KENNETH A. ROCCO, J., CONCUR.

DIANE KARPINSKI
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the

journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).