

[Cite as *State v. Kestranek*, 2009-Ohio-473.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 90917

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHAEL KESTRANEK

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-496217

BEFORE: Cooney, A.J., Gallagher, J., and Boyle, J.

RELEASED: February 5, 2009

**JOURNALIZED:
ATTORNEYS FOR APPELLANT**

Robert Tobik
Chief Public Defender

BY: John T. Martin
Assistant Public Defender
310 Lakeside Avenue
Suite 200
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William Mason
Cuyahoga County Prosecutor

BY: William Leland
Assistant County Prosecutor
8th Floor, Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

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).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Defendant-appellant, Michael Kestranek (“Kestranek”), appeals his misdemeanor conviction for unauthorized use of a motor vehicle. For the reasons set forth below, we dismiss the appeal as moot.

{¶ 2} A review of the record on appeal indicates that on October 25, 2007, Kestranek was convicted of unauthorized use of a motor vehicle under R.C. 2913.03(B), a fifth degree felony. On November 8, 2007, he filed a motion for post-verdict acquittal, or in the alternative, a motion for a new trial. After a hearing, the court granted the motion in part, amending Kestranek’s conviction to the unauthorized use of a motor vehicle under R.C. 2913.03(A), a first degree misdemeanor. He was sentenced to three months in prison, which was suspended on the condition he serve six months probation. He was also ordered to pay court costs and fees and restitution in the amount of \$522.50. In June 2008, the trial court found that Kestranek violated probation and extended probation to December 31, 2008.

{¶ 3} We note that when a defendant, who has been convicted of a misdemeanor offense, voluntarily completes his 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* (1975), 41 Ohio St.2d 236, 325 N.E.2d 236; see, also, *State v. Golston*, 71 Ohio St.3d 224, 1994-Ohio-109, 643 N.E.2d 109, 110.

{¶ 4} Thus, in reviewing misdemeanor convictions, we have held that “unless one convicted of a misdemeanor seeks to stay the sentence imposed pending appeal or otherwise involuntarily serves or satisfies it, the case will be dismissed as moot unless the defendant can demonstrate a particular civil disability or loss of civil rights specific to him arising from the conviction.” *Cleveland v. Martin*, Cuyahoga App. No. 79896, 2002-Ohio-1652. See, also, *Cleveland v. Pavlick*, Cuyahoga App. No. 91232, 2008-Ohio-6164.

{¶ 5} In the instant case, Kestranek has completely served and satisfied the sentence imposed pursuant to his misdemeanor conviction and has paid all court costs and fees. Furthermore, the record shows that he never sought a stay of execution of his sentence.

{¶ 6} Thus, there is no further ongoing or future penalty from which this court can grant relief. Moreover, Kestranek’s brief is completely void of any assertions of a civil disability or loss of civil rights that he will allegedly suffer as a result of the conviction, nor was any disability raised during oral argument.

{¶ 7} Accordingly, the appeal is dismissed.

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

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

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
MARY J. BOYLE, J., CONCUR