

[Cite as *State v. Santiago*, 2015-Ohio-1301.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101612

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

LUIS SANTIAGO

DEFENDANT-APPELLANT

JUDGMENT:
DISMISSED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-581151-A

BEFORE: Keough, P.J., Blackmon, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: April 2, 2015

APPELLANT

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. The purpose of an accelerated appeal is to allow the appellate court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983); App.R. 11.1(E).

{¶2} Defendant-appellant, Luis Santiago, appeals the trial court's decision revoking his bond and imposing the maximum prison sentence. For the reasons that follow, we dismiss the appeal.

{¶3} In January 2014, Santiago was indicted for drug possession, a fifth-degree felony. Following arraignment, Santiago posted bond. A pretrial was set for February 18, 2014, at 9:00 a.m. When Santiago appeared late to his pretrial, the trial court ordered Santiago to submit to an immediate drug test at probation and return to the courtroom. Santiago appeared to probation two hours later and submitted a sample that was determined to be "too dilute." The trial court revoked Santiago's bond.

{¶4} In March 2014, Santiago pleaded no contest to the charge of drug possession, and the trial court found him guilty and ordered probation to prepare a presentence investigation report for sentencing. At sentencing, the court noted Santiago's lengthy criminal history, including multiple felonies, which resulted in terms of imprisonment. Santiago was sentenced to the maximum sentence of one year in prison. He did not request a stay of his sentencing pending appeal. Santiago now appeals, raising two assignments of error.

I. Length of Prison Term

{¶5} In his first assignment of error, Santiago contends that the trial court erred by imposing a maximum 12-month prison term ignoring mitigating circumstances and the mandate of H.B. 86 pertaining to a fifth-degree felony.

{¶6} Santiago does not challenge his plea or overall conviction; rather, he challenges the length of the prison term imposed. We take judicial notice that Santiago was released from prison in January 2015, after serving his entire sentence.

{¶7} It has long been the rule in Ohio that an appeal from a conviction is moot when the offender has completed his sentence and has failed to sustain his burden of demonstrating a collateral disability or loss of civil rights stemming from that conviction. *State v. Berndt*, 29 Ohio St.3d 3, 504 N.E.2d 712 (1987); *State v. Wilson*, 41 Ohio St.2d 236, 325 N.E.2d 236 (1975). But recognizing “the numerous adverse collateral consequences imposed upon convicted felons,” the Supreme Court, in *State v. Golston*, 71 Ohio St.3d 224, 227, 643 N.E.2d 109 (1994), “adopted a conclusive presumption that ‘[a] person convicted of a felony has a substantial stake in the judgment of conviction which survives the satisfaction of the judgment.’” *Cleveland Hts. v. Lewis*, 129 Ohio St.3d 389, 2011-Ohio-2673, 953 N.E.2d 278, ¶ 19, quoting *Golston* at syllabus. Thus, the court held 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.” *Golston* at syllabus.

{¶8} The *Golston* rule recognizes that a convicted felon who has completed his sentence should not suffer the collateral consequences associated with a felony conviction without being afforded an opportunity to challenge that conviction. But that principle is not served, and thus an appeal is moot, when, as here, the appellant challenges only his

sentence, and his completion of his sentence leaves him without a remedy affecting his conviction. *See, e.g., State v. Pompei*, 8th Dist. Cuyahoga No. 79541, 2001 Ohio App. LEXIS 5052 (Oct. 25, 2001); *State v. Bellomy*, 9th Dist. Medina No. 12CA0075-M, 2013-Ohio-3187; *State v. Crockran*, 2d Dist. Clark No. 05CA0018, 2006-Ohio-3192; *Columbus v. Duff*, 10th Dist. Franklin No. 04AP-901, 2005-Ohio-2299.

{¶9} Accordingly, because Santiago is no longer serving his sentence, there is no remedy this court may provide. Even addressing the merits of this assignment of error, we would find that Santiago’s sentence is not contrary to law.

{¶10} R.C. 2929.13(B)(1)(a) provides that a court “shall” sentence an offender to a community control sanction of at least one year’s duration on felonies of the fourth and fifth degree if certain conditions, as outline in sections i-iv, are met. In order to receive the benefit of a mandatory community control sanction, the offender must not have any prior felony offenses. R.C. 2929.13(B)(1)(a)(i). Additionally, the court may impose a prison term for an offender who has been convicted of a fifth-degree felony if that offender had previously served a prison term. R.C. 2929.13(B)(1)(b)(x).

{¶11} In this case, Santiago entered a no contest plea and was found guilty of drug possession, a felony of the fifth degree. The trial court noted that Santiago had previously been convicted of multiple felonies, which resulted in a prison sentence. Accordingly, the record demonstrates that Santiago was not entitled to a mandatory period of community control for this offense.

{¶12} We further find that his sentence is not contrary to law because the record supports that trial court considered the purposes and principles of sentencing under R.C.

2929.11 as well as the recidivism factors listed in R.C. 2929.12. Furthermore the court properly applied postrelease control and imposed a sentence within the permissible statutory range. *See State v. Brown*, 8th Dist. Cuyahoga No. 100874, 2014-Ohio-4381, ¶ 7, citing *State v. A.H.*, 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, ¶ 10.

{¶13} Accordingly, his sentence was not contrary to law. However, Santiago's assignment of error is moot because his prison sentence has been completed.

II. Bond Revocation

{¶14} In his second assignment of error, Santiago contends that the trial court violated his Ohio and United States constitutional rights of due process and equal protection of the law by revoking his bond without good cause shown.

{¶15} After a conviction ““any error concerning the issue of pretrial bail is moot.”” *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, 854 N.E.2d 1038, ¶ 206, quoting *State v. Patterson*, 110 Ohio App.3d 264, 271, 673 N.E.2d 1001 (10th Dist.1996). Santiago's remedy at the time that his bond was revoked was to file a writ of habeas corpus. *See Patterson* at 272, citing *State ex rel. Baker v. Troutman*, 50 Ohio St.3d 270, 553 N.E.2d 1053 (1990). Santiago did not seek this remedy. Accordingly, his second assignment of error is moot.

{¶16} Dismissed.

It is ordered that the parties share equally in 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 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
ANITA LASTER MAYS, J., CONCUR