2019 IL App (5th) 160086-U

NO. 5-16-0086

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Marion County.
	)	
v.	)	No. 13-CM-127
	)	
WALTER HOUSTON,	)	Honorable
	)	Mark W. Stedelin,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet and Justice Boie concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant has served his entire sentence; therefore this appeal of his sentence is moot. The appeal is dismissed.

¶ 2 The defendant, Walter Houston, appeals his sentence of 180 days. The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant. OSAD filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Anders v. California*, 386 U.S. 738 (1967). The defendant was given proper notice and granted an extension of time to file briefs, objections, or any other document supporting his appeal. The defendant did not file a response. We considered OSAD's motion to withdraw as counsel on appeal. We examined the entire record on appeal and found no

error or potential grounds for appeal. For the following reasons, we grant OSAD's motion to withdraw as counsel on appeal and we dismiss the appeal.

¶ 3 BACKGROUND

¶ 4 The defendant was convicted of resisting or obstructing a peace officer (720 ILCS 5/31-1(a) (West 2012)). The court sentenced him to two years' probation. The State subsequently filed a petition to revoke the defendant's probation, alleging that the defendant had committed a battery and had failed to undergo drug and alcohol testing as directed by his probation officer. The defendant entered an open admission to the alleged failure to undergo drug and alcohol testing but not to the alleged battery. The court found that the defendant had violated his probation by failing to undergo testing. A sentencing hearing was held on February 11, 2016. Over the defendant's objection, two police officers offered hearsay testimony regarding the alleged battery. Following the hearing, the court revoked the defendant's probation and sentenced the defendant to 180 days in jail. He was taken into custody that day. On February 25, 2016, the court conducted a hearing on the defendant's motion to reconsider sentence. The court denied the motion. The defendant filed a notice of appeal that stated he was appealing the sentencing order. He indicated in the notice the dates of the judgments appealed from were February 11 and 25, 2016.

¶ 5 ANALYSIS

¶ 6 An issue on appeal is moot when the underlying facts have changed such that the court cannot grant relief. *In re Shelby R.*, 2012 IL App (4th) 110191, ¶ 16. In most cases, a challenge to a sentence that has been completely served is moot. *In re Shelby R.*, 2013

IL 114994, ¶ 14. Here, the defendant's 180-day sentence from February 11 has long since come and gone. But there are exceptions to the mootness doctrine. *In re Alfred H.H.*, 233 Ill. 2d 345 (2009).

¶ 7 If there are collateral consequences to the issue raised on appeal, an exception to the mootness doctrine may apply. *In re Alfred H.H.*, 233 Ill. 2d 362-62. In *Alfred H.H.*, the court held that the collateral consequences doctrine applied to the propriety of a involuntary mental-health admission. *Id.* The court reasoned that a person appealing an involuntary admission, especially where no prior such admission existed, faced possible collateral consequences because, for example, such a record could impede a person's ability to work in certain fields. *Id.* Here, no such collateral consequences exist. The sentence has been served, and the defendant did not appeal his conviction.

¶ 8 Another exception exists for issues that are capable of repetition but evade review due to the court's inability to resolve the issue before the cessation of the issue. *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998). The capable-of-repetition exception cannot be invoked unless "there is a reasonable expectation that the same complaining party would be subjected to the same action again." *Id.* The defendant cannot satisfy this prerequisite. We will not presume that the defendant will be again convicted for the same crime, receive probation for that conviction, plead guilty to charges of a probation violation, and then appeal his sentence. There is no reasonable expectation of repetition.

¶ 9 Finally, a public-interest exception to the mootness doctrine may exist. Three elements must be met before such an exception can be invoked: (1) "the question presented is of a public nature," (2) public officers are in need of authoritative guidance,

and (3) it is likely the same issue will recur. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2016 IL 118129, ¶ 12. The exception applies only when each element is established. *Id.* ¶ 13. There is no dearth of existing case law regarding sentencing. Therefore, the second element of the public-interest exception is not met because there is no need for guidance of public officers; the case law concerning any argument the defendant could make is ample, so that exception does not apply.

¶ 10 Defendant's case is moot, and no exception to the mootness doctrine applies. Accordingly, we have no jurisdiction. *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 292 (2005). Therefore, we take the only action we have authority to perform. This appeal is dismissed.

¶ 11 CONCLUSION

¶ 12 The defendant's sentence having been served, this appeal is moot, and we dismiss it.

¶ 13 Appeal dismissed.