ORIGINAL

IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND HEIGHTS	:
	:
(Plaintiff-Appellant)	: Supreme Court Case No. 2010-1203
	:
vs.	:
	:
WARREN LEWIS	: On Appeal from the
	: Cuyahoga County Court of Appeals
(Defendant-Appellee)	: Eighth Appellate District
	:
	: Court of Appeals
	: Case No. CA09-92917

MERIT BRIEF OF APPELLANT CITY OF CLEVELAND HEIGHTS, OHIO

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III. STATEMENT OF FACTS

On February 5, 2009, the Cleveland Heights, Ohio Municipal Court found Appellee, Warren Lewis (hereinafter referenced as "Mr. Lewis"), guilty of obstructing official business and sentenced him to three days in jail and six months inactive probation. (See "Notice of Appeal filed from Cleveland Heights Municipal Court" (May 5th, 2009); see, also "Announcement of [the Eighth District] Court's Decision" (May 19th, 2010), Vol. 705, pg. 400; Journal Entry, Vol. 705, pg. 400 (June 1st, 2010), Appx. pp. 6-28). The Court further ordered him to pay a $100.00 fine and court costs. (Id.). The trial court suspended the three-day jail sentence. (Id.). Mr. Lewis subsequently paid his $100.00 fine and court costs. (See "Announcement of [the Eighth District] Court's Decision" (May 19th, 2010, Vol. 705, pg. 400; "Journal Entry," Vol. 705, pg. 400 (June 1st, 2010), Appx. 6-28).[1]

On February 6, 2010, Mr. Lewis moved the trial court to stay execution of his sentence pending his appeal. (Id.; see, also "Original Papers filed by the Trial Court," (April 3rd, 2009), "Motion for Stay of Execution" (filed in the Cleveland Heights Municipal Court on February 6th, 2009)). On February 10, 2009, the trial judge denied Mr. Lewis' motion to stay execution of his sentence. (See "Original Papers filed by the Trial Court" (April 3rd, 2009), "Motion for Stay of Execution Denied," (filed in the Cleveland Heights Municipal Court on February 10, 2010)). On March 4, 2009, Mr. Lewis filed his appeal to the Eighth District Court of Appeals. ("Notice of Appeal Filed from the Cleveland Heights Municipal Court" (March 5th, 2010)). During the pendency of his appeal, Mr. Lewis served his six months of inactive probation, which ended in

[1] There is not dispute that Mr. Lewis paid the $100.00 fine imposed by the trial court.

August of 2009. ("Announcement of [the Eighth District] Court's Decision" (May 19th, 2010), Vol. 705, pg. 400; "Journal Entry," Vol. 705, pg. 400 (June 1st, 2010), Appx. pp. 6-28).

In his merit brief filed with the Eighth District Court of Appeals, Mr. Lewis set forth only one assignment of error, to wit: "[t]he trial court erred by overruling appellant's Rule 29 motions and by finding [Warren Lewis] guilty of obstruction of official business." ("Appellant's Brief Filed" (July 6th, 2009), Appx. pp. 6-28). Mr. Lewis did not address in his merit brief whether his appeal was rendered moot as a consequence of serving all aspects of his sentence. (Id.; see, also "Announcement of [Eighth District] Court's Decision" (May 19th, 2010), Vol. 705, pg. 400; "Journal Entry," Eighth District Court of Appeals, Vol. 705, pg. 400 (June 1st, 2010), Appx. pp. 6-28). In addition, Appellee did not allege any collateral disability as a result of his appeal being moot. (Id.).

On May 19, 2010, the Eighth District Court issued an en banc decision reversing the trial court's ruling and vacating appellant Warren Lewis' conviction for obstruction of official business. ("Announcement of [Eighth District] Court's Decision" (May 19th, 2010), Vol. 705, pg. 400; "Journal Entry," Eighth District Court of Appeals Vol. 705, pg. 400 (June 1st, 2010)). In its decision, the Eighth District Court sua sponte raised the question of whether Mr. Lewis' appeal was moot because he served the entirety of his sentence and did not seek a stay of execution in the court of appeals. (Id.). The Eighth District Court determined that Mr. Lewis did not voluntarily serve his sentence; therefore, his appeal was not moot. ("Announcement of [the Eighth District] Court's Decision" (May 19th, 2010), Vol. 705, pg. 400, 404; "Journal Entry," Vol. 705, pg. 404 (June 1st, 2010), Appx. p. 12). The court of appeals determined that because Mr. Lewis filed a motion to stay execution of his sentence in the trial court, it must be inferred that he did not intend to voluntarily serve his sentence. (Id.).

The honorable Judge Colleen Conway Cooney dissented from the majority's holding. Judge Cooney held that Mr. Lewis voluntarily complied with the terms of his sentence and failed to exhaust all forms of available relief, including the filing of a stay of execution pursuant to Ohio Appellate Rule 8 with the Court of Appeals. (See "Announcement of [the Eighth District] Court's Decision" (May 19th, 2010), Vol. 705, pg. 417-418; Journal Entry, Vol. 705, pg. 417-418 (June 1st, 2010), Appx. pp. 25-26). Therefore, Mr. Lewis' appeal to the Eighth District Court of Appeals was moot. (Id.).

The City of Cleveland Heights (hereinafter, the "Appellant") brings this appeal upon a finding of a certified conflict between the Eighth District Court of Appeals and several other Ohio appellate districts, namely the Second and Seventh appellate districts. Per this Court's September 28th, 2010 entry, the following issue is to be addressed in this appeal:

> Whether an appeal is rendered moot when a misdemeanor defendant serves or satisfies his sentence after unsuccessfully moving for a stay of execution in the trial court, but without seeking stay of execution in the appellate court.

The Appellant maintains that Mr. Lewis' appeal to the court of appeals was moot because he served his entire sentence (specifically, the six months of inactive probation) and did not file a motion for stay of execution of his sentence in the court appeals after the trial court denied his motion for stay.

IV. ARGUMENT

A. Proposition of Law: An appeal is moot when a misdemeanor defendant serves all aspects of his or her sentence before filing a motion for stay of execution of the sentence in the court of appeals.

A misdemeanor defendant must avail his or her self of the relief provided for under Appellate Rule 8(B) prior to serving his or her sentence; otherwise, an appeal to the court of appeals is moot. In *State v. Wilson* (1975), 41 Ohio St.2d 236, 325 N.E.2d 236, the Ohio

Supreme Court set forth the standard for determining whether an appeal is moot. In *Wilson*, this Court held:

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

Id. at Syllabus. Thus, where a criminal defendant voluntarily pays a fine or completes his sentence, an appeal is moot in the absence of any evidence that the defendant will suffer some collateral disability or loss of civil rights as a result of the conviction. See Id.

In the instant case, Mr. Lewis did not present any evidence to the Eighth District Court of Appeals to support a finding that he would suffer a collateral disability or loss of his civil rights if his appeal were deemed moot. Moreover, the Eighth District Court stated that the record on appeal did not support a finding that Mr. Lewis would suffer a collateral disability or loss of his civil rights if his appeal were mooted. (See "Announcement of [the Eighth District] Court's Decision" (May 19th, 2010), Vol. 705, pg. 417-418; Journal Entry, Vol. 705, pg. 417-418 (June 1st, 2010), Appx. p. 9).

Accordingly, the only question on appeal is whether Mr. Lewis voluntarily served his sentence, namely his six months of inactive probation. If Mr. Lewis voluntarily served his sentence, then his appeal to the Eighth District Court of Appeals was moot.

1. Analysis of the Eighth District Court of Appeal's Decision

The Eighth District Court of Appeals incorrectly determined that an appeal is not moot when a misdemeanor defendant completely serves his or her sentence, but fails – prior to completing the sentence – to seek a stay of execution in the court of appeals. The Eighth District Court of Appeals determined that because Mr. Lewis filed a stay of execution with the trial court,

it must be inferred that he did not intend to voluntarily serve his sentence. ("Announcement of [the Eighth District] Court's Decision" (May 19, 2010), Vol. 705, pg. 404; "Journal Entry" (June 1, 2010), vol. 705, pg. 404, Appx. p. 12). The Eighth District Court held:

> We can infer that Lewis did not intend to complete all aspects of his sentence, because he requested a stay of execution of his sentence; thus payment of the fine and costs, and completion of the inactive probation were involuntary.

(Id.). The Eighth District Court cited to several of its previous holdings, in which the court concluded that a defendant does not voluntarily complete his or her sentence when he or she has moved for a stay of execution of the sentence, and the stay has been denied. See, generally *Cleveland v. Burge*, Cuyahoga App. No. 83713, 2005-Ohio-5210; *Cleveland v. Townsend*, Cuyahoga App. No. 87006, 2006-Ohio-6265; *Broadview Hts v. Krueger*, Cuyahoga App. No. 88998, 2007-Ohio-5337.

The Eighth District further relied upon the Eleventh District Court of Appeals decision in *State v. Blivens* (Sept. 30, 1999), 11th Dist. No. 98-L-189, 1999 W.L. 960955, *2. In its decision, the Eighth District quotes the following language in *Blivens:*

> An appeal is not rendered moot if the defendant unsuccessfully seeks a stay of execution of the sentence. In such a situation, the completion of the sentence would be involuntary, and the defendant would retain his or her right to appeal the underlying conviction and sentence.

Id., citing *State v. Harris* (1996), 109 Ohio App.3d 873, 875, 673 N.E.2d 237. The above language, however, must be construed in its proper context. First, it should be noted that in the case cited to by the Eleventh District, *State v. Harris,* the criminal defendant actually sought a stay of execution in both the trial court and the court of appeals. Id. at 109 Ohio App.3d at 875, 673 N.E.2d at 238. Regardless, the situation in *State v. Blivens* differed markedly from the issue presented in this case. In *Blevins*, the Eleventh District found the criminal defendant's appeal

moot, and not because she voluntarily served her sentence after being denied a motion for stay of execution by the trial court. Rather, the Eleventh District Court found that because the defendant served her entire sentence and did not appeal the conviction itself – she only appealed the severity of the sentence imposed by the trial court – her appeal was moot. Id. at *3. Thus, *Blevins* does not apply to this case.

The Eighth District's holding in this case was premised entirely on the assumption that a misdemeanor defendant, who files an application for stay in the trial court, never intends to voluntarily serve his or her sentence. Yet, the mere fact that Mr. Lewis filed an application for stay in the trial court, and the application was denied, does not necessarily lead to the conclusion that Mr. Lewis involuntarily served his sentence. This is especially true considering that Mr. Lewis had the option of seeking a stay of execution in the court of appeals, pursuant to Ohio appellate Rule 8(B), before serving his sentence. Ohio Appellate Rule 8(B) provides, in pertinent part, as follows:

> Application for release on bail and for suspension of execution of sentence after a judgment of conviction shall be made in the first instance in the trial court. Thereafter, if such application is denied, a motion for bail and suspension of execution of sentence pending review may be made to the court of appeals or to two judges thereof.

Id. Therefore, to suggest that Mr. Lewis had no choice but to serve his sentence ignores the fact that he had the right to seek a stay of execution in the court of appeals before completing his sentence.

In addition, the Eighth District's argument considers only one possible inference that could be drawn from Mr. Lewis' actions, and ignores all others. Another possible inference could be drawn from Mr. Lewis' actions – because Mr. Lewis served his sentence and did not seek a stay of execution in the court of appeals after the trial court denied his motion for stay, he

voluntarily served his sentence. Stated differently, it cannot reasonably be concluded that a misdemeanor defendant, such as Mr. Lewis, who serves all aspects of his sentence – rather than exhausting available remedies to stay the sentence pending an appeal – involuntarily serves the sentence.

2. Analysis of Appellate Districts that have deemed an appeal moot on the basis that the misdemeanor defendant served all aspects of the sentence without seeking a stay of execution in the court of appeals.

Although the Eighth District Court of Appeals has affirmatively stated that an appeal is not moot when a defendant is denied a stay of execution in the trial court and then serves his or her sentence, several appellate courts have determined otherwise. The Second and Seventh District Courts of Appeal, for example, have rejected the reasoning adopted by the Eighth District. See *Dayton v. Huber,* 2nd Dist. No. 20425, 2004-Ohio-7249; *Carroll County Bureau of Support v. Brill*, 7th Dist. No. 05CA818, 2005-Ohio-6788; see, also *State v. Concliff* (1978), 61 Ohio App.2d 185, 193, 401 N.E.2d 469 (stating, in dicta, that the payment of a fine and costs on the day of the conviction is not involuntary, because "had the trial court refused a stay, upon proper application to [the court of appeals], a stay would have been granted pending an appeal in order to prevent the appeal[] from becoming moot.").

In *Dayton v. Huber,* the city charged the plaintiff with a misdemeanor offense. *Huber* at ¶1. The court found the defendant guilty and imposed a fine and court costs. Id. at ¶¶ 1-2. The defendant filed an application with the trial court to stay execution. Id. at ¶ 2. The trial court denied defendant's request. Id. Following the denial, the defendant paid the fine and court costs; he then filed a notice of appeal with the Second District Court of Appeals. Id. The Second District Court ruled the defendant's appeal moot, reasoning that because the defendant failed to

seek a stay of execution from the court of appeals pursuant to App. R. 8(B), and voluntarily paid his fines and court costs, his appeal was moot. Id. at ¶ 8. The court in *Huber* concluded:

> In our view, when a trial court denies a stay, a defendant convicted of a misdemeanor must seek a stay of execution of sentence in the appellate court in order to avoid a finding that his appeal was moot. Indeed, it reasonably follows that when a defendant chooses to pay his fine rather than availing himself of potential relief in the appellate court, such payment is voluntary.

Id. at ¶ 6. Thus, the *Huber* Court determined that when a trial court denies an application for stay of execution, a misdemeanor defendant must avail his or her self of potential relief in the appellate court before paying a court fine (or serving all aspects of a sentence); otherwise, an appeal to the court of appeals will be deemed moot. Id. at ¶¶ 6-7.

In addition, in *Carroll County Bureau of Support v. Brill*, 7th Dist. No. 05CA818, 2005-Ohio-6788, the Seventh District Court of Appeals held that the defendant voluntarily served his sentence when he failed to seek a stay of execution from the court of appeals. In *Brill*, the defendant was found in contempt of a child support order and, as a result, was ordered to serve thirty days in jail. Id. at ¶ 19. The defendant's attorney moved the trial court for a stay of execution, which was denied. Id. at ¶ 20. The defendant did not file a motion for stay of execution in the appellate court. Id. The defendant served his sentence and filed a notice of appeal. Id. The court determined that the defendant's appeal was moot, holding:

> We conclude that Brill completed his jail sentence voluntarily as he never motioned the trial court to set a hearing regarding whether or not he purged, nor did he attempt to stay the execution of his sentence by motioning for relief from this court.

Id. Thus, similar to *Huber,* the *Brill* Court determined that a criminal defendant must exhaust appellate relief before serving a sentence or paying a fine.

3. Mr. Lewis' appeal to the Eighth District Court should be deemed moot.

The question in this case is whether Mr. Lewis voluntarily or involuntarily served his sentence. Appellant agrees with the Eighth District that where a misdemeanor defendant has no choice but to serve a sentence (or pay a fine) before having an opportunity to file a motion for stay of execution in the court of appeals, the misdemeanor defendant involuntarily serves his or her sentence or pays the fine. For example, if a misdemeanor defendant, after being denied a request for stay of execution in the trial court, is required to pay a fine (or serve a sentence) on the same day of trial or the date of sentencing, then it would be unreasonable to require a criminal defendant to seek a stay of execution in the court of appeals. In this circumstance, a misdemeanor defendant's payment of a fine and court costs might be characterized as involuntary, and a subsequent appeal of the conviction would unlikely be deemed moot.

In this case, however, the court did not require the defendant to serve his sentence prior to having an opportunity to seek a stay of execution in the court of appeals. On February 5, 2010, the trial court sentenced Mr. Lewis to three days in jail and six months inactive probation. The court suspended the jail sentence. Mr. Lewis completed his six months of inactive probation in August of 2009 – more than four months from the date he filed his appeal from the Cleveland Height Municipal Court. As such, he had more than enough time to file a stay of execution in the court of appeals before serving all aspects of his sentence. Thus, unlike a misdemeanor defendant who is forced to pay a fine (or serve a sentence) before seeking a stay of execution in the court of appeals, Mr. Lewis was under no such duress.

In addition, the mere fact that Ohio Appellate Rule 8(B) provides a defendant with the ability to seek a stay of execution in the court of appeals speaks to the question presented in this appeal. Ohio Appellate Rule 8(B) is clear that: (1) a misdemeanor defendant must initially file a

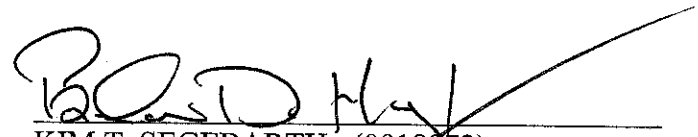
stay of execution in the trial court, and (2) if the application to stay is denied, the misdemeanor defendant may pursue this same relief (stay of execution of the sentence) from the court of appeals. See OHIO APP. R. 8(B). Clearly, if a misdemeanor defendant serves his sentence or pays a fine after seeking a stay of execution in both the trial court and the court of appeals, the act of serving his or her sentence or paying the fine is involuntary. Choosing, however, to serve a sentence or pay a fine, rather than filing a stay of execution in the court of appeals is another matter.

As noted above, there is no evidence that Mr. Lewis was under duress to complete his six months of inactive probation. Mr. Lewis should have filed a motion to stay execution of his sentence pursuant to Ohio Appellate Rule 8(B). Given that such relief was available to Mr. Lewis pursuant to Ohio Appellate Rule 8(B), and he failed to exhaust such relief before completing his sentence, his appeal to the Eighth District should be deemed moot.

V. CONCLUSION

Based upon the foregoing, Appellant, the City of Cleveland Heights respectfully requests that this honorable Court find Mr. Lewis' appeal to the Eighth District Court of Appeals moot because he served his sentence without first seeking a stay of execution in the court of appeals. The Appellant further requests that, on account of Mr. Lewis' appeal being moot, this honorable Court reverse the Eighth District Court of Appeals' decision overturning Mr. Lewis' conviction for obstruction of official business.

Respectfully submitted,



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VI. PROOF OF SERVICE

A copy of the foregoing Merit Brief of the Appellant City of Cleveland Heights, Ohio was sent by ordinary U.S. mail this 26th day of November, 2010, to:

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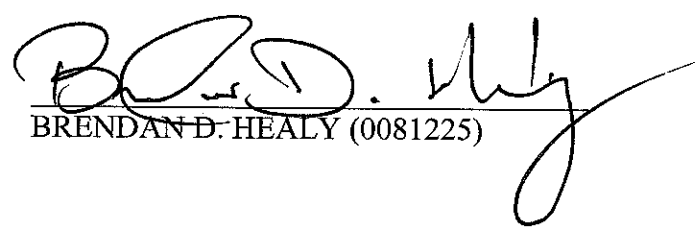

BRENDAN D. HEALY (0081225)

VII. APPENDIX

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C. Cleveland Heights, Ohio Municipal Court Disposition (February 5th, 2009)	28

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IN THE SUPREME COURT OF OHIO

10-1203

CITY OF CLEVELAND HEIGHTS	) On Appeal from the Ohio
	) Court of Appeals
Appellee	) Eighth Appellate District
	)
vs.	)
	) Court of Appeals
	) Case No. CA 09-92917
WARREN LEWIS	)
	)
Appellant	)

APPELLANT THE CITY OF CLEVELAND HEIGHTS' NOTICE OF CERTIFIED CONFLICT

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EXHIBIT A

Pursuant to S. Ct. Prac. R. 4.1., appellant the City of Cleveland Heights hereby submits this notice of certified conflict for the Court's consideration.

On January 13, 2010, oral argument in the above matter was held before the Ohio Eighth District Court of Appeals. On May 15, 2010, the Eighth District issued an en banc decision in *City of Cleveland Heights v. Warren Lewis* (*See* attached as Exhibit A), reversing the trial court's ruling and vacating Warren Lewis' conviction for obstruction of official business. The Eighth District's holding not only addressed Lewis' appeal of his conviction, but also *sua sponte* raised the issue as to whether Lewis' appeal was moot.

In its holding, the Eighth District explored whether Lewis' payment of a court imposed fine and court costs as well as service of (a suspended) three day jail term and six months of inactive probation were voluntary, affecting whether his appeal was properly before the court. The Eighth District determined that the appeal was not moot, holding that because Lewis filed a motion to stay execution of his sentence with the trial court that was later denied, he had involuntarily complied with his sentence, entitling him to appellate review.

The Eighth District's decision was not unanimous. It included a dissenting opinion from Judge Colleen Conway Cooney regarding the issue of mootness. Judge Cooney's dissent disagreed with the majority, holding that Lewis voluntarily complied with the terms of his sentence. The dissent further provided that although Lewis filed a motion to stay execution of his sentence with the trial court, he failed to exhaust all forms of available relief, including filing a stay of execution pursuant to App. R. 8 with the Court of Appeals. Lastly, Judge Cooney's dissenting opinion emphasized the conflict that exists between the appellate court's ruling in *Lewis* and those of other Ohio appellate districts.

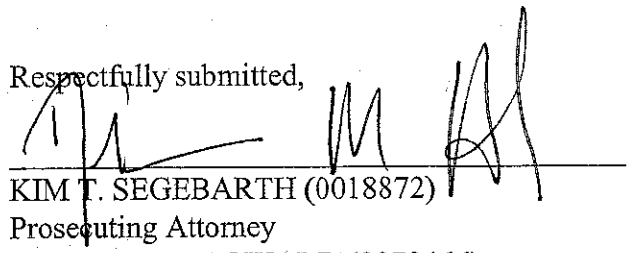
On May 28, 2010, the City of Cleveland Heights moved to certify this matter as a conflict. In its motion, the City of Cleveland Heights argued that the majority's opinion in *Lewis* was in direct conflict with the Ohio Second District Court of Appeals' decision in *Dayton v. Huber,* 2nd Dist. No. 20425, 2004-Ohio-7249 (*See* attached as Exhibit B) as well as the Ohio Seventh District Court of Appeals' decision in *Carroll County Bureau of Support v. Brill*, 7th Dist. No. 05CA818, 2005-Ohio-6788 (*See* attached as Exhibit C). In both *Huber* and *Brill*, the courts held that when individuals do not seek a stay of execution from appellate courts, but rather elect to serve a sentence, their actions are deemed voluntary.

On June 10, 2010, the Eighth District issued a decision granting the City's motion, certifying the above matter as a conflict (*See* attached as Exhibit D). The Eighth District held in relevant part:

> This court certifies that a conflict exists between this court's en banc decision in *City of Cleveland Heights v. Lewis*, Cuyahoga App. No. 92917, 2010-Ohio-2208, and the decisions of the Second District and Seventh District in *Dayton v. Huber*, Montgomery App. No. 20425, 2004-Ohio-7249; and *Carroll City. Bur. Of Support v. Brill*, Carroll App. No. 05 CA 818, 2005-Ohio-6788. The court hereby certifies this matter to the Ohio Supreme Court pursuant to App. R. 25(A) and Article IV section 3(B)(4) of the Ohio Constitution for resolution of the following issue: "whether an appeal is rendered moot when a misdemeanor defendant serves or satisfies his sentence after unsuccessfully moving for a stay of execution in the trial court, but without seeking a stay of execution in the appellate court."

On the basis of the Eight District Court of Appeals' decision to certify the above matter as a conflict, appellant the City of Cleveland Heights hereby provides this Court with notice of a certified conflict pursuant to S. Ct. Prac. R. 4.1.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Copy of the foregoing **Notice of Certified Conflict** was sent by ordinary U.S. mail this 8th day of July, 2010, to:

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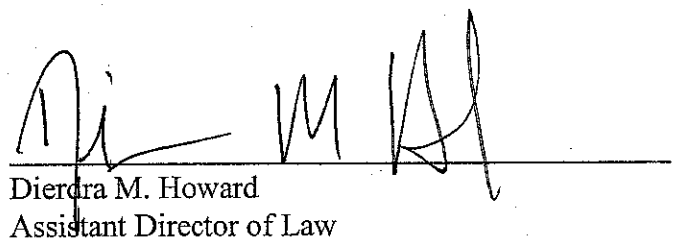

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COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION
EN BANC
No. 92917

CITY OF CLEVELAND HEIGHTS

PLAINTIFF-APPELLEE

vs.

WARREN LEWIS

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND CONVICTION VACATED

CA09092917 63472308

Criminal Appeal from the
Cleveland Heights Municipal Court
Case No. CRB-0801263A

BEFORE: En Banc Court

RELEASED: May 19, 2010

JOURNALIZED: JUN X 1 2010

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FILED AND JOURNALIZED
PER APP.R. 22(C)

JUN X 1 2010

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
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ANNOUNCEMENT OF DECISION
PER APP.R. 22(B) AND 26(A)
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) unless a motion for reconsideration with supporting brief per App.R. 26(A) is filed within ten 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(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

PATRICIA ANN BLACKMON, J.:

Pursuant to Loc.App.R. 25.1, this court convened an en banc conference in accordance with *McFadden v. Cleveland State Univ.*, 120 Ohio St.3d 54, 2008-Ohio-4914, 896 N.E.2d 672.

Appellant Warren Lewis appeals his conviction for misdemeanor obstructing official business and assigns the following error for our review:

> **"I. The trial court erred by overruling appellant's Rule 29 motions and by finding appellant guilty of obstruction [sic] of official business."**

Having reviewed the record and pertinent law, we reverse the trial court's decision and vacate Lewis's conviction. The apposite facts follow.

Procedural Facts

The trial judge found Lewis guilty of obstructing official business and sentenced him to three days in jail, $100 fine, court costs, and six months' inactive probation. The trial judge suspended the three days.

The next day, Lewis moved the trial judge to stay execution of his sentence pending his appeal. The trial judge denied his motion to stay execution of the sentence.

Lewis timely filed his appeal, and on March 4, 2009, he paid his fine and court costs. While his appeal was pending, he served his inactive probation, which ended in August 2009.

In his appeal, Lewis failed to address whether his appeal was rendered moot because he had completed all aspects of his sentence and failed to allege any collateral disability. We do not gather from the record any inference of a collateral disability.

During oral argument, this court raised the mootness issue with both parties. Lewis's attorney argued that the appeal was sustainable because Lewis asked the trial court for a stay of execution of his sentence before he paid the fine and court costs, but the trial court refused.

Mootness

The initial issue before us is whether Lewis involuntarily served or satisfied all aspects of his sentence.

In our most recent opinion on this issue, we held the following:

> **"[u]nless 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." *Oakwood v. Pfanner*, Cuyahoga App. No. 90664, 2009-Ohio-464, citing *Cleveland v. Martin*, Cuyahoga App. No. 79896, 2002-Ohio-1652. See, also, *Cleveland v. Pavlick*, Cuyahoga App. No. 91232, 2008-Ohio-6164.**

The facts show that Lewis failed to show a collateral disability, and we cannot infer the existence of one from this record. Consequently, in order for Lewis to avoid dismissal of his appeal, he has to show that his sentence was

stayed or involuntarily satisfied. The record establishes that the trial court refused to stay execution of his sentence; consequently, Lewis's appeal can only survive mootness and dismissal if he involuntarily served or satisfied all aspects of his sentence. We conclude that his sentence was involuntarily served or satisfied.

Several decisions from this court have spoken to the meaning of the phrase "unless otherwise involuntarily serves" and have held that a defendant does not voluntarily complete his sentence when he has moved for a stay of execution of the sentence, and the stay has been denied by the trial court. *Cleveland v. Burge*, Cuyahoga App. No. 83713, 2004-Ohio-5210; *Cleveland v. Townsend*, Cuyahoga App. No. 87006, 2006-Ohio-6265; and *Broadview Hts. v. Krueger*, Cuyahoga App. No. 88998, 2007-Ohio-5337.

We have suggested that the very existence of an unsuccessful motion for stay results in the sustainability of the appeal. One court made the following observation: "In such a situation, the completion of the sentence would be involuntary, and the defendant would retain his or her right to appeal the underlying conviction and sentence." *State v. Blivens* (Sept. 30, 1999), 11th Dist. No. 98-L-189, citing *State v. Harris* (1996), 109 Ohio App.3d 873, 875, 673 N.E.2d 237. The situation in that case was an unsuccessful stay of execution in the trial court.

At least one court has held that a defendant convicted of a misdemeanor must seek a stay of execution of the sentence in the appellate court to avoid dismissal of the appeal as moot. *Dayton v. Huber*, 2nd Dist. No. 20425, 2004-Ohio-7249.

We decline to follow this ruling because the reasoning does not avoid the situation where the defendant has no option but to pay the fine in order to avoid contempt of court or jail. For example, in *Broadview Hts. v. Krueger*, Cuyahoga App. No. 88998, 2007-Ohio-5337, the trial court asked defendant, after he had denied her stay of execution of the sentence, whether she was prepared to pay the fine on that day. She paid the fine. The situation in *Krueger* placed the defendant in an automatic involuntary position.

It could be argued, however, that *Krueger* should be narrowly read. But prior to *Krueger,* this court used the denial of a stay of execution as the bench mark for determining mootness. *Townsend,* Cuyahoga App. No. 87006, 2006-Ohio-6265; *Burge,* Cuyahoga App. No. 83713, 2004-Ohio-5210. In *Townsend* and *Burge,* we held that a defendant does not voluntarily complete the sentence when he has unsuccessfully moved for a stay of execution of his sentence. We believe that those cases are correct in light of *State v. Wilson* (1975), 41 Ohio St.2d 236, 325 N.E.2d 236.

In *Wilson*, the defendant pled no contest after his motion to suppress a concealed weapon was denied. The trial court found him guilty, and he promptly paid the fine and cost. In *Wilson*, there was no doubt that the defendant intended to complete his sentence.

This is not the case here. We can infer that Lewis did not intend to complete all aspects of his sentence because he requested a stay of execution of his sentence; thus payment of the fine and cost, and completion of the inactive probation were involuntary. Accordingly, we will address the merits of his appeal.

Facts

At trial, Officer Clayburn testified that on June 21, 2008, he was dispatched to Bainbridge Road on a call regarding a juvenile fight involving three girls. Officer Clayburn testified that when he arrived on the scene, he spoke with the girls involved, including Lewis's daughter, who had an injury to her eye. Officer Clayburn also spoke with several parents, including Lewis's wife.

Officer Clayburn testified that because he received conflicting versions from each party and could not tell who was the aggressor, he decided to charge all three girls. Officer Clayburn advised the parents that all three girls would

be charged, and he began gathering information from the respective parents about their child.

Officer Clayburn testified that as he was gathering the information, Lewis arrived and began talking with the other parents in a hostile manner. Officer Clayburn testified that he asked Lewis to leave the scene, but he initially refused. Eventually, Lewis relented and walked back to his house.

Officer Clayburn testified that after he had gathered the information from the other parents, he went to Lewis's house to get information on Lewis's daughter. Officer Clayburn testified that Lewis, who was standing on the porch, refused to give him any information, and he walked back into his house.

Officer Clayburn testified that he then approached Lewis's wife to obtain the information. Officer Clayburn testified that Lewis's wife, a U.S. postal worker, was seated in her postal vehicle when he approached. Officer Clayburn stated that while he was talking with Lewis's wife, Lewis told his wife not to give him any information. Officer Clayburn stated that Lewis's wife then indicated that she could not give him any information and then drove away.

Officer Clayburn testified that he again approached Lewis and told him that he needed the information. Officer Clayburn testified about the ensuing events as follows:

"Q. What happened next?

A. He was still upset. I then approached him and told him I needed the address and needed the information on his daughter. And if he didn't give me the information on the address, I would look for the address. I couldn't locate the address on the residence. And I told him I need the address. And he told me to find it myself.

Q. You mean the house itself had no number?

A. Right.

Q. It was on Bainbridge, but it had no number?

A. No.

Q. So you asked him for the daughter's information and he did not provide any information on the daughter?

A. Right.

Q. You asked him the address of the house and he said find it yourself?

A. Yes, more or less, figure it out yourself. That's what it was.

Q. What happened next?

A. At that point in time I advised him, I said, you are going to be arrested if you don't give me the information, because I need that information to complete the investigation and the charge. And he said you do what you have to do, arrest me. And I went over and I arrested him and placed him in handcuffs. He cooperated, placing his hands behind his back." Tr. 24-25.

Officer Clayburn charged Lewis with obstructing official business and resisting arrest.

Lewis testified that he is employed by the U.S. Postal Service as a letter carrier. Lewis testified that when he arrived on the scene, he learned from his wife that two girls, who had attacked their daughter two days earlier, had attacked her again. Lewis also learned that Officer Clayburn intended to charge all three girls with disorderly conduct. Lewis testified that as he was about to talk with the other parents, Officer Clayburn told him he had to leave because he did not want a riot. Lewis testified that he initially refused, but walked back to his house.

Lewis testified that when Officer Clayburn came to his house to inquire about the address, he told him he did not have anything to say. Lewis denied that he told his wife not to speak to Officer Clayburn. Lewis testified that after he refused to give Officer Clayburn the house number, Officer Clayburn spoke with his wife who was parked across the street.

Lewis testified that at the time that Officer Clayburn approached his wife, who is also U.S. postal employee, she was leaving to go back to work. Lewis testified that because Officer Clayburn was leaning into the vehicle, he told his wife that Officer Clayburn could not detain her because she was in a federal vehicle.

Lewis's wife, Noelle Eberhart Lewis ("Mrs. Lewis"), testified that she is also employed by the U.S. postal service as a letter carrier. Mrs. Lewis testified

that two days prior to the incident, the same two girls had attacked her daughter at Cleveland Heights High School. Mrs. Lewis testified that she had filed an incident report with the Cleveland Heights Police Department.

Mrs. Lewis testified that when Officer Clayburn approached her postal vehicle, she was about to return to work and Officer Clayburn positioned himself in a manner that prevented her from leaving. Mrs. Lewis testified that she attempted to show Officer Clayburn a copy of the police report, but he was not receptive and would not take the report. Mrs. Lewis testified it was at that point that her husband, who was standing on the porch, said "don't you have to go back to work? You need to go back to work." Tr. 176.

Motion for Acquittal

In the sole assigned error, Lewis argues the trial court erred in overruling his motion for acquittal. We agree.

Crim.R. 29(A), which governs motions for acquittal, states:

> **"The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses."**

The sufficiency of the evidence standard of review is set forth in *State v. Bridgeman* (1978), 55 Ohio St.2d 261, 381 N.E.2d 184, syllabus:

> **"Pursuant to Criminal Rule 29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt." See, also, *State v. Apanovitch* (1987), 33 Ohio St.3d 19, 23, 514 N.E.2d 394; *State v. Davis* (1988), 49 Ohio App.3d 109, 113, 550 N.E.2d 966.**

Bridgeman must be interpreted in light of the sufficiency test outlined in *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, in which the Ohio Supreme Court held:

> **"An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence submitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. (*Jackson v. Virginia* [1979], 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560, followed.)"**

In the instant case, the trial court found Lewis guilty of obstructing official business in violation of R.C. 2921.31(A), which provides in pertinent part as follows:

> **"(A) No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within his official capacity, shall do any act which hampers or impedes a public official in the performance of his lawful duties."**

After reviewing the record, we find that the evidence is insufficient to support a conviction for obstructing official business. The complaint stated and Officer Clayburn testified that the sole reason that he arrested and charged Lewis with obstructing official business was for the refusal to give information on his daughter. Officer Clayburn testified in pertinent part as follows:

> "Q. **And you arrested him because he refused to give you his address?**
>
> A. **He wouldn't give me any information at all.**
>
> Q. **That's [the] act of obstruction that you arrested him for?**
>
> A. **Yes.**
>
> "* * *
>
> Q. **That the act of obstructing official business and impeding you was the refusal to give information on his daughter who was being charged?**
>
> A. **Correct."** Tr. 39-41.

Courts have generally required an affirmative act for the offense of obstructing official business. *Cleveland v. Weems,* Cuyahoga App. No. 82752, 2004-Ohio-476, citing *N. Ridgeville v. Reichbaum* (1996), 112 Ohio App.3d 79, 84, 677 N.E.2d 1245; *Hilton v. Hamm* (1986), 33 Ohio App.3d 175, 176, 514 N.E.2d 942. Mere failure to obey a law enforcement officer's request does not bring a defendant within the ambit of this offense. Id., citing *Garfield Hts. v. Simpson* (1992), 82 Ohio App.3d 286, 611 N.E.2d 892. Similarly, refusal to

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provide information to police does not render one guilty of that offense. *Parma v. Campbell* (Nov. 1, 2001), Cuyahoga App. Nos. 79041 and 79042, citing *State v. McCrone* (1989), 63 Ohio App.3d 831, 580 N.E.2d 468.

Officer Clayburn admitted that he was not impeded by Lewis's refusal to provide the requested information. Officer Clayburn testified as follows:

> "Q. **So, Mr. Lewis's refusal to give you any information on his daughter, including his address, didn't really impede you or obstruct you, because you were able to get the same information from the computer, correct?**
>
> A. **Correct.**
>
> Q. **And in fact, his refusal to give you his address didn't impede or obstruct you, because there's numerous other ways for you to have gotten that address, correct?**
>
> A. **Correct."** Tr. 58-59.

We conclude that Lewis's conviction for obstructing official business is not supported by the record. When viewed in the light most favorable to the prosecution, the evidence could not convince a reasonable trier of fact beyond a reasonable doubt that Lewis unlawfully hampered and impeded Officer Clayburn in the performance of his official duties. Accordingly, we sustain Lewis's sole assigned error.

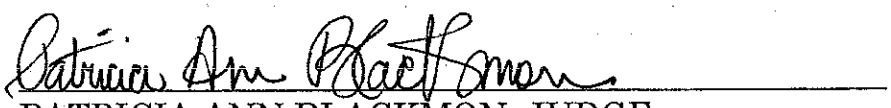
Judgment reversed and conviction vacated.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.



PATRICIA ANN BLACKMON, JUDGE

Concurring:

MARY J. BOYLE, J.,
FRANK D. CELEBREZZE, JR., J.,
ANN DYKE, J.,
SEAN C. GALLAGHER, A.J.,
LARRY A. JONES, J.,
MARY EILEEN KILBANE, J.,
KENNETH A. ROCCO, J.,
MELODY J. STEWART, J., and
JAMES J. SWEENEY, J.

CHRISTINE T. McMONAGLE, J., CONCURS WITH SEPARATE CONCURRING OPINION

Concurring in
Separate Concurring Opinion:

PATRICIA A. BLACKMON, J.,
MARY J. BOYLE, J.,
SEAN C. GALLAGHER, A.J.,
MARY EILEEN KILBANE, J.,
KENNETH A. ROCCO, J., and
MELODY J. STEWART, J.

COLLEEN CONWAY COONEY, J., DISSENTS WITH DISSENTING OPINION

CHRISTINE T. McMONAGLE, J., CONCURRING:

I concur with the majority opinion in this case, but write separately to emphasize my belief that any criminal conviction, whether felony or misdemeanor, results in a "collateral disability." See my dissent in *State v. McGrath*, 8th Dist. No. 85046, 2005-Ohio-4420. I would hold it appropriate to review *any* timely filed appeal from a criminal conviction without necessity of alleging or proving a "collateral disability" resulting from the conviction.

For instance, in the recent case of *State v. Robinson*, 1st Dist. Nos. C-081084 and C-081141, 2010-Ohio-543, ¶20, the appellate court held that "conviction for a **minor-misdemeanor** violation of R.C. 2925.11 [marijuana possession] creates a disability prohibiting the possession of a firearm or dangerous ordnance, even though the conviction may not constitute a 'criminal record' for background checks involved in licensing." (Emphasis added.) Penalties escalate for subsequent OVI offense convictions, see R.C. 4511.99, to say nothing of insurance rates. Misdemeanor assault convictions are non-expungeable. R.C. 2953.31. Any misdemeanor conviction prevents a subsequent request for expungement, whether felony or misdemeanor. *Chillicothe v. Herron* (1982), 3 Ohio App.3d 468, 445 N.E.2d 1171.[1] Under the Adam Walsh Act, many

[1]"In order for one to be a 'first offender' as such term is defined in R.C. 2953.31, and entitled to expungement under R.C. 2953.32, the applicant must be a person with no other criminal convictions, including traffic offenses." Id. at syllabus.

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misdemeanor sex offenses result in labeling and reporting requirements. R.C. 2929.23. All applicants for the Ohio Bar examination must report any misdemeanor convictions; indeed, a misdemeanor conviction could form the basis of a suspension from the practice of law. *Disciplinary Counsel v. Gross* (1984), 11 Ohio St.3d 48, 463 N.E.2d 382. In short, there is a palpable collateral disability to any misdemeanor conviction.

In 1975, when the Ohio Supreme Court decided *State v. Wilson* (1975), 41 Ohio St.2d 236, 325 N.E.2d 236, the Court recognized numerous instances where convictions resulted in disabilities: under state law, as a result of a conviction, a defendant could not engage in certain businesses, serve as an official of a labor union, vote in elections, or serve as a juror.[2] Even in cases where a disability *might* occur, courts have decided that cases should not be rendered moot on appeal where: a prisoner was eligible for parole on another sentence and a misdemeanor conviction might have an adverse effect on granting such parole, a defendant's employer instituted proceedings that might result in suspending the defendant from work without pay if the conviction stood, and a conviction of an alien could weaken a defense to deportation proceedings.[3]

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[2]*United States v. Morgan* (1954), 346 U.S. 502, 74 S.Ct. 247, 98 L.Ed. 248; *Byrnes v. United States* (C.A.9, 1969), 408 F.2d 599; *Carafas v. LaVallee* (1968), 391 U.S. 234, 88 S.Ct. 1556, 20 L.Ed.2d 554.

[3]*Cordle v. Woody* (D.C. Va. 1972), 350 F.Supp. 479; *Street v. New York* (1969), 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed.2d 572; *Fiswick v. United States* (1946), 329 U.S.

Nonetheless, the law that has evolved essentially states that felons may obtain the ear of the appellate court even if they complete their sentence before appellate review; misdemeanants may not unless they specifically show a "collateral disability" resulting from their conviction, or jump through the "request for stay" hoops (either one or two, depending upon whether one "sides with" the majority or the dissent in this matter). I think it is time for the courts to review this issue. Many, if not all of the disabilities mentioned above, e.g., the effect of a minor misdemeanor conviction upon the right to possess firearms, the prohibition against expungement of certain offenses, etc., came into law well-beyond the time for appeal of the conviction had run.

Again, while I believe that **any** criminal conviction creates collateral disabilities and hence upon timely request should be reviewed by appellate courts, we are asked to address here only whether one or two requests for stay are necessary in order to preserve appellate review for misdemeanants.

The issue has been framed as one of the "voluntariness" of the defendant's serving his sentence.[4] Both the majority and the dissent would hold that a

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211, 67 S.Ct. 224, 91 L.Ed.2d 196.

[4]I note with some amusement that the Black's Law Dictionary definition of "voluntary" reads as follows: "Unconstrained by interference; unimpelled by another's influence; spontaneous, acting of one's self * * * proceeding from the free and unrestrained will of the person."

What jail sentence and/or monetary fine could accordingly, ever be termed "voluntarily served?"

defendant who completes his sentence and does not request a stay in either the trial or the appellate court, absent a showing upon the record that the defendant was **forced** to serve his sentence before he could reasonably file a request for stay,[5] has rendered his appeal moot. The majority would simply hold that a request for stay made (and denied) in the trial court before the sentence is served is sufficient evidence that the sentence was involuntarily served. The dissent would hold that unless the request for stay was repeated to the appellate court before the sentence was served, it would be presumed the sentence was served voluntarily. I concur with the majority that "once is enough." Actually, as articulated herein, I believe that "once is more-than-enough."

While it is true, of course, that stays of misdemeanor sentences are rarely granted by trial courts,[6] I believe the request therefor is sufficient indicia that any sentence subsequently served is being served involuntarily. Accordingly, I would review the merits of this matter.

In short, people pay fines and serve sentences because they believe something much worse will happen if they do not. This is duress and coercion (albeit legal), not a voluntary act.

[5]Presumably a three day sentence issued on a Friday afternoon that culminated in "Officer, take him away."

[6]If only for the difficulty in a trial court's tracking a case in order to ascertain whether an appeal was actually filed and actually prosecuted to conclusion.

COLLEEN CONWAY COONEY, J., DISSENTING:

I respectfully dissent. I would dismiss the within appeal as moot because Lewis has completed his sentence, including six months' probation.

App.R. 8 provides:

"(A) **Discretionary right of court to release pending appeal.** The discretionary right of the trial court or the court of appeals to admit a defendant in a criminal action to bail and to suspend the execution of his sentence during the pendency of his appeal is as prescribed by law.

"(B) **Release on bail and suspension of execution of sentence pending appeal from a judgment of conviction.** Application for release on bail and for suspension of execution of sentence after a judgment of conviction shall be made in the first instance in the trial court. Thereafter, if such application is denied, a motion for bail and suspension of execution of sentence pending review may be made to the court of appeals or to two judges thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee."

The majority correctly notes that Lewis was denied a stay by the trial court. However, our record shows he failed to request a stay from our court during the six months he was on probation. Therefore, I would find that Lewis voluntarily completed his sentence and his appeal is moot.

Two districts have followed this principle. The majority has cited the well-reasoned opinion in *Dayton v. Huber*, 2nd Dist. No. 20425, 2004-Ohio-7249. However, the Seventh District has also held that an appellant must seek a stay at the court of appeals to preserve his issues on appeal. See *Carroll Cty. Bur. of Support v. Brill*, 7th Dist. No. 05CA818, 2005-Ohio-6788, ¶20, 30, 33.

Two of the cases from this court on which the majority relies are easily distinguishable. A stay was denied by both the trial court and the court of appeals in *Cleveland v. Townsend*, Cuyahoga App. No. 87006, 2006-Ohio-6265. And *Cleveland v. Burge*, Cuyahoga App. No. 83713, 2004-Ohio-5210, involved a conviction for assault that by its very nature carried obvious collateral consequences.

While I agree with this court's analysis in *Broadview Hts. v. Krueger*, Cuyahoga App. No. 88998, 2007-Ohio-5337, a defendant who is given a fine and costs and asked "Can you pay today?" does not have much choice but to pay that day, at the trial court's urging.[7] Under that circumstance, clearly a defendant has not "voluntarily" paid or served his or her sentence. But when the defendant has time and opportunity to comply with App.R. 8 and seek a stay pending appeal, after filing a notice of appeal and before the sentence is completed, he must do so in order to demonstrate he did not voluntarily serve his sentence. That is the scenario presented in the instant case.

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[7]The trial court in *Krueger* denied the defendant's request for a stay pending appeal, stating, "What's to appeal? You just pled no contest." Krueger paid her fine to the Parma Municipal Court that day. Id. at ¶4.

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The State of Ohio, Cuyahoga County. } ss.

I, GERALD E. FUERST, Clerk of the Court of Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be, kept, hereby certify that the foregoing is taken and copied from the Journal Entry, Volume 705 Page 398 Dated: 6-1-10 CA 92917 of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal Entry, Vol. 705 Pg. 398 Dated: June 1, 2010 and that the same is correct transcript thereof.

In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 4th day of June A.D. 20 10

GERALD E. FUERST, Clerk of Courts

By _____ Deputy Clerk

CLEVELAND HEIGHTS MUNICIPAL COURT
Disposition

State of Ohio/ City of Cleveland Heights v. Warren Lewis

Case No. 08-01263

Charge:	Plea/Date	Amend./Plea Chg./Date	FDG	Fine
A Obst. OFF Business	NG 7-8-08	/ /	Guilty	$100
B Resisting Arrest	NG "	/ /	Not Guilty	$
C	/	/ /		$
D	/	/ /		$
E	/	/ /		$

Return to Court 8-12-08 at 1:30 for ☑ P.T. ☐ Trial ☐ Sentencing ☐ DV Review

Return to Court _____ at _____ for ☐ P.T. ☐ Trial ☐ Sentencing ☐ DV Review

Return to Court _____ at _____ for ☐ P.T. ☐ Trial ☐ Sentencing ☐ DV Review

SENTENCE IS HEREBY ORDERED ADJUDGED AND DECREED ON _____

Fine: $ 100 Suspend: _____ Total Fine: $ 100 ; Costs: ☑ Imposed ☐ Indigent

Jail 3 Suspend all ~~but~~ _____ ☐ Credit _____ ☐ Stay _____ for _____ Days.

Imposed: Ø . ☐ _____ to run concurrent with: _____

Probation: 3 **yr./mo. Active;** 6 **yr./mo. Inactive.** **Conditions:**

☐ _____ Hours of Community Service; $ _____ Fee; ☐ No Fee

☐ Complete: _____ batterer's program/ _____ other: _____

☐ No convictions domestic violence/violence related offenses or _____

☐ No menacing, harassing or abuse of _____ ☐ No entry on

or coming within _____ ft. of the above persons' premise or place of work at:

_____

☐ No purchases, ownership or possession of firearms. Must relinquish all firearms currently owned or in the defendant's possessions within 7 days of this order to the Cleveland Heights Police Dept.

☐ Return to court for sentence compliance review on: _____

☐ Pay restitution of/up to $ _____ through probation to _____

☐ Other: _____

_____

FILED MUNICIPAL COURT 08 FEB -5 AM 9:39 CLEVELAND HEIGHTS MUNICIPAL COURTS CLERK OF COURTS

2/5/09
Date

028

Judge

All funds received by the court are distributed per administrative order of December 2003, effective 01/01/04