

MEMORANDUM IN SUPPORT

I. STATEMENT OF THE CASE

A. CR-09-522895

On May 19, 2009, relator Kyle Waler pled guilty to one count of drug possession in violation of R.C. 2925.11(A) (count 1) and attempted tampering with evidence in violation of R.C. 2923.02/R.C. 2921.12(A)(1) (amended count 2). Count 3 was nolle. On July 1, 2009, Waler was sentenced to two years of community control. On February 22, 2010, the trial court held a hearing at which time it found Waler had violated community control and continued his community control. On June 2, 2010, the trial court held a hearing at which time it found Waler had again violated community control and continued his community control. On August 13, 2010, the trial court held another hearing at which time it found Waler had again violated community control and sentenced Waler to fourteen months in prison. On September 14, 2010, Waler filed a motion for jail-time credit.

B. CR-09-531728-A

On January 22, 2010, Waler pled guilty to drug possession in violation of R.C. 2925.11(A). On February 22, 2010, Waler was sentenced to two years of community control. On June 2, 2010, the trial court held a hearing at which time it found Waler had violated community control and continued his community control. On August 13, 2010, the trial court held another hearing at which time it found Waler had again violated community control and sentenced Waler to twelve months in prison. On September 14, 2010, Waler filed a motion for jail-time credit.

On May 20, 2011, Waler filed a complaint for writ of procedendo (“Complaint”) asking this Court to compel respondent Judge Ambrose to rule on a motion for jail-time credit he filed with the trial court on September 14, 2010 in Cuyahoga County Court of Common Pleas case numbers CR-09-522895 and CR-09-531728-A.

II. LAW AND ARGUMENT

In his Complaint Waler is asking this Court to compel respondent Judge Ambrose to rule on a motion for jail-time credit he filed with the trial court on September 14, 2010 in Cuyahoga County Court of Common Pleas case numbers CR-09-522895 and CR-09-531728-A.

But on May 23, 2011, respondent Judge Ambrose ruled on Waler’s motion for jail-time credit he filed in Cuyahoga County Court of Common Pleas case numbers CR-09-522895 and CR-09-531728-A. (See journal entries of May 23, 2011, attached to the “Notice of Judicial Action” filed contemporaneously with this Motion and identified as Exhibits A and B).¹

Because respondent Judge Ambrose has ruled on Waler’s motion for jail-time credit he filed in Cuyahoga County Court of Common Pleas case numbers CR-09-522895 and CR-09-531728-A, Waler’s Complaint is moot. *State ex rel. Fontanella v. Kantos*, 117 Ohio St.3d 514, 2008-Ohio-1431, ¶ 6 (“Neither procedendo nor mandamus will compel the performance of a duty that has already been performed.”).

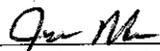
¹ Said “Notice of Judicial Action” appends Judge Ambrose’s sentencing journal entries of May 23, 2011, in Cuyahoga County Court of Common Pleas case numbers CR-09-522895 and CR-09-531728-A (Exhibits A and B).

III. CONCLUSION

For the foregoing reasons, respondent Dick Ambrose respectfully requests that this Honorable Court grant Respondent's Motion To Dismiss.

Respectfully submitted,

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Cuyahoga County Prosecutor


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CERTIFICATE OF SERVICE

A copy of the foregoing Respondent's Motion To Dismiss has been served by regular U.S. Mail, postage prepaid, on this 6th day of June, 2011 upon the following:

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