

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

December 30, 2024

[Cite as *12/30/2024 Case Announcements, 2024-Ohio-6043.*]

MOTION AND PROCEDURAL RULINGS

2024-0669. State v. Balmert.

Lorain App. No. 22CA011908, [2024-Ohio-1207](#). On appellant's second motion to stay sentence pending appeal. Motion denied.

Donnelly, J., dissents, with an opinion joined by Brunner, J.
Stewart, J., dissents.

DONNELLY, J., joined by BRUNNER, J., dissenting.

{¶ 1} I dissent from the decision to deny appellant Edward Balmert's request that we stay execution of his prison sentence while this court considers the merits of his jurisdictional appeal.

{¶ 2} Following a bench trial, the trial court convicted Balmert of aggravated vehicular assault, in violation of R.C. 2903.08(A)(1)(a), and of operating a vehicle while under the influence of a listed controlled substance or listed metabolite of a controlled substance, in violation of R.C. 4511.19(A)(1)(j)(viii)(II). *See State v. Balmert, 2024-Ohio-1207, ¶ 3* (9th Dist.). He is currently serving a prison term of two years for these convictions. *Id.* at ¶ 4.

{¶ 3} According to information available from the Ohio Department of Rehabilitation and Correction, Balmert will complete his prison sentence on or about May 4, 2026. Ohio Department of Rehabilitation and Correction, *Offender Details*, <https://appgateway.drc.ohio.gov/OffenderSearch/Search/Details/A812041> (accessed Dec. 24, 2024) [<https://perma.cc/7GRX-KCRX>]. The briefing for Balmert's appeal was not completed until December 24, 2024. And the court has already scheduled oral arguments through March 13 of next year. *See Supreme Court of Ohio, Oral Argument Calendar, https://www.supremecourt.ohio.gov/opinions-*

cases/oral-arguments/oral-argument-calendar/ (accessed Dec. 24, 2024) [<https://perma.cc/TTJ4-VX5F>]. All this is to say that, depending on the speed with which the court schedules and considers this case, there is a strong likelihood that Balmert will have served most of his sentence before the court resolves the merits of his appeal. And given the time it sometimes takes to properly consider an appeal, it is not outside the realm of possibility that Balmert might even complete his sentence before the court is able to reach a decision.

{¶ 4} To be sure, a defendant’s completion of his sentence does not automatically render his appeal moot. *See Cleveland Hts. v. Lewis*, 2011-Ohio-2673, ¶ 26 (completion of a sentence does not render an appeal moot if the appellant has not agreed to the judgment or abandoned appellate review, the appellant has a substantial stake in the judgment of conviction, and there is still a matter for the appellate court to decide). Even so, I believe that the more prudent course would be for this court to stay execution of Balmert’s sentence, thereby removing any doubt that a live controversy exists when his case is considered and a decision is rendered.

{¶ 5} What is more, this case does not present the situation in which a defendant asks us to stay his sentence while we consider whether to accept his appeal. A majority of this court has determined that Balmert’s case warrants review. Given that we have exercised our discretion in accepting Balmert’s appeal, *see* 2024-Ohio-2718, I believe that we should not subject him to further prison time that might, ultimately, be the result of an unsound conviction. If this court concludes that Balmert’s conviction should stand, then he will serve the remainder of his sentence and justice will be served.

{¶ 6} Because the majority does not reach this conclusion, I dissent.
