

Lyle Tucker (“Tucker”) was convicted in Owen Circuit Court of Class D felony possession of methamphetamine, Class A misdemeanor possession of marijuana, Class A misdemeanor resisting law enforcement, and Class A misdemeanor possession of a handgun without a license and sentenced to an aggregate of four years with 650 days suspended to probation. Tucker appeals and claims that he was denied the right to counsel at a hearing where the trial court determined how much time remained on the executed portion of Tucker’s sentence. We conclude that the proper remedy for any denial of Tucker’s right to counsel would be to remand for a hearing at which Tucker’s counsel was present. However, because Tucker has already served the executed portion of his sentence, we dismiss this appeal as moot.

Facts and Procedural History

After Tucker fled from the police in his truck, he was charged with Class D felony possession of methamphetamine, Class A misdemeanor possession of marijuana, Class A misdemeanor resisting law enforcement, and Class A misdemeanor carrying a handgun without a license. Tucker eventually pleaded guilty, and the trial court sentenced him to three years on the Class D felony and one year on each of the misdemeanor counts, with the misdemeanors to be served concurrently with each other but consecutive to the felony sentence. Thus, Tucker was sentenced to an aggregate term of four years. The trial court suspended all but 810 days of the sentence and placed Tucker on probation for the remaining 650 days. Tucker was given credit for 257 days served, plus good time credit of an additional 257 days. When these 514 days were deducted from his 810 days executed, Tucker had only 296 days to serve executed.

When the Indiana Department of Correction received the abstract of judgment, it informed the trial court that it would not accept Tucker because he had less than a year to serve on his sentence. The trial court then entered an amended commitment order committing Tucker to the Owen County jail to serve his sentence. For reasons that are not entirely clear in the record, Tucker was subsequently released from incarceration and reported to the probation department on October 20, 2010. The probation department apparently contacted the trial court and/or the local prosecutor, and an immediate, unscheduled hearing was held to determine Tucker's status. Tucker informed the trial court that his sister was in the process of contacting his attorney to attend the hearing and represent Tucker, but the trial court decided to review the history of Tucker's case outside the presence of his counsel. The trial court determined that, pursuant to its commitment order, Tucker had more time to serve. When the trial court suggested that the hearing should be continued and Tucker released on his own recognizance until Tucker's counsel could appear, the State objected. The trial court then ordered that Tucker be remanded into custody to serve the remaining executed portion of his sentence. Tucker now appeals.

Discussion and Decision

On appeal, Tucker claims that the trial court erred when it held the hearing to determine whether he should be taken into custody without his counsel being present. Tucker argues that his hearing was a critical stage of the proceedings against him and that he therefore had the right to counsel at the hearing. See Mosley v. State, 908 N.E.2d 599, 604 (Ind. 2009) (noting that the Sixth Amendment right to counsel guarantees the

assistance of counsel at critical stages of prosecution up through trial, sentencing, and various post-trial matters). On direct appeal, the remedy for a violation of the right to counsel is to remand for another hearing where the defendant may be represented by counsel. See, e.g., Martin v. State, 588 N.E.2d 1291, 1294 (Ind. Ct. App. 1992) (reversing and remanding with instructions to conduct new hearing where defendant had been denied right to counsel); Ellis v. State, 525 N.E.2d 610, 612 (Ind. Ct. App. 1987) (remanding for new hearing where defendant could be represented by counsel after determining that defendant had been denied right to counsel at hearing). Therefore, if Tucker was denied the right to counsel at the hearing, we would reverse and remand with instructions that the trial court hold a new hearing to determine whether Tucker still had executed time to serve. But, by all appearances, Tucker has already served his executed time.

Tucker was sentenced on September 28, 2010 to a sentence of four years, with 810 days executed and 650 days suspended. Tucker was also given credit for a total of 514 days for time served and good time credit. Thus, Tucker had to serve 296 days of his executed sentence. By our calculation, 296 days from September 28, 2010 is July 21, 2011. But this does not take into consideration any good time credit, and there is no indication that Tucker did not receive good time credit. With good time credit, Tucker would only serve half of the 296 days, or 148 days. And 148 days from September 28, 2010 was February 23, 2010. Tucker should have been released to probation on February 23, 2010, after serving the executed portion of his sentence.

Tucker's actual release is confirmed by the trial court's CCS, which is publicly available as part of the Odyssey case management system at <http://mycase.in.gov>. The trial court's CCS shows that the trial court held a hearing on January 28, 2011 to determine Tucker's release date. The court reaffirmed that Tucker's release date was February 23, 2011. And the CCS entry for February 23, 2011 indicates that Tucker began his probation on that date.¹ It is apparent that Tucker has already served the executed portion of his sentence. There would therefore be little point for us to remand with instructions for the trial court to hold a new hearing to determine the amount of executed time remaining for Tucker to serve. In other words, this case is moot.

When we are unable to provide effective relief upon an issue, the issue is deemed moot, and we will not reverse the trial court's determination where no change in the status quo will result. Jones v. State, 847 N.E.2d 190, 200 (Ind. Ct. App. 2006).² Id. Because we could provide no real remedy even if we agreed with Tucker's claim that the trial court denied him the right to counsel, we dismiss this case as moot.

Dismissed.

FRIEDLANDER, J., and MAY, J., concur.

¹ We note that this case was not fully briefed and assigned to this panel until February 11, 2011, just twelve days before Tucker was released from incarceration.

² This case does not appear to fit within the public interest exceptions to the general rule against deciding moot questions. See id. (noting that public interest exception may be invoked when the issue involves a question of great public importance, the factual situation precipitating the issue is likely to recur, and the issue arises in a context which will continue to evade review).