

**IN THE COURT OF APPEALS OF IOWA**

No. 2-706 / 11-1568  
Filed November 29, 2012

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**HENRY EARL DINKINS,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Scott County, Mark J. Smith,  
Judge.

Henry Dinkins appeals from the sentences imposed following his guilty  
pleas to third offense operating while intoxicated and driving while barred.

**APPEAL DISMISSED.**

Jack Dusthimer, Davenport, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney  
General, Michael J. Walton, County Attorney, Robert Bradfield and Kelly  
Cunningham, Assistant County Attorneys, for appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

**EISENHAUER, C.J.**

Henry Dinkins appeals from the sentences imposed following his guilty pleas to third offense operating while intoxicated and driving while barred. He contends his attorney was ineffective “in failing to protect Dinkins and the existing plea agreement.” He also contends the State violated the plea agreement and this case should be remanded for resentencing. We dismiss the appeal as moot.

Dinkins pled guilty to various criminal charges following plea negotiations. As part of one plea agreement, the State agreed to dismiss some pending simple misdemeanors at sentencing. The State did not abide by that part of the agreement at sentencing. The State asks us to take judicial notice of court records showing the simple misdemeanor were dismissed the next month, after this appeal had been filed.

We may consider mootness on our own motion. See *In re Estate of Troester*, 331 N.W.2d 123, 127 (Iowa 1983). “Ordinarily, an appeal is deemed moot if the issue becomes nonexistent or academic and, consequently no longer involves a justiciable controversy.” *State v. Hernandez-Lopez*, 639 N.W.2d 226, 234 (Iowa 2002). As a general rule, we will dismiss an appeal when judgment, if rendered, will have no practical legal effect upon the existing controversy. *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 679 (Iowa 1998). Matters outside the record on appeal, which have transpired during or since the appeal, are properly considered in resolving a mootness claim. *In re L.H.*, 480 N.W.2d 43, 45 (Iowa 1992). The only “benefit of the bargain” Dinkins did not receive at sentencing was dismissal of the simple misdemeanor charges. Court records show the simple misdemeanors were dismissed shortly after this appeal was

filed. Our decision on the merits would have no practical legal effect as Dinkins has received the benefit of the plea bargain. Accordingly, we dismiss this appeal as moot.<sup>1</sup>

**APPEAL DISMISSED.**

---

<sup>1</sup> Dinkins weaves claims relating to another plea agreement, the subject of a separate appeal, into this appeal. That appeal was dismissed as frivolous, and procedendo has issued. We do not consider those claims.