

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
PIKE COUNTY

STATE OF OHIO,	:	Case No. 18CA892
Plaintiff-Appellee,	:	
v.	:	
DARRELL W. WEST,	:	<u>DECISION AND JUDGMENT ENTRY</u>
Defendant-Appellant	:	<b>RELEASED: 11/13/2018</b>

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Hoover, A.J.

{¶1} Appellant Darrell West appeals an entry denying his motion to require an attorney who was appointed to represent him in a criminal case that has since been dismissed to turn over certain discovery materials to him. We ordered him to address whether the entry is a final appealable order. In his response, West concedes that the entry is not a final appealable order and he believes that the information he seeks from his former attorney is now a matter of public record. Nevertheless, West urges us to exercise jurisdiction over his appeal.

{¶2} We find that the trial court's entry denying West's motion is a nullity and is not a final appealable order. We lack jurisdiction and dismiss the appeal.

I. PROCEDURAL BACKGROUND

{¶3} West was indicted on various drug charges in Pike County in 2014 that were later dismissed under Crim.R. 48(A) in 2015. In 2018, West filed a motion in the dismissed case seeking an order requiring the attorney that had been appointed to represent him to deliver to him certain discovery materials.

{¶4} The trial court denied the motion on the grounds: (1) the attorney was appointed to represent West in that case only and her responsibility with respect to it

ended with the dismissal of the case in 2015 and (2) the materials West sought are in the trial court's file and may be obtainable by a review of the file or a public records request. West appealed.

## II. LAW AND ANALYSIS

{¶5} Ohio law provides that appellate courts have jurisdiction to review only final orders or judgments. Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. If an order is not final and appealable, an appellate court has no jurisdiction to review the matter and it must be dismissed. "An order of a court is a final appealable order only if the requirements of both R.C. 2505.02 and, if applicable, Civ.R. 54(B), are met." *State ex rel. Scruggs v. Sadler*, 97 Ohio St.3d 78, 2002–Ohio–5315, 776 N.E.2d 101; see also, *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86, 541 N.E.2d 64, syllabus (1989). The threshold requirement, therefore, is that the order satisfies the criteria of R.C. 2505.02. *Gehm v. Timberline Post & Frame*, 112 Ohio St.3d 514, 2007-Ohio-607, 861 N.E.2d 519, ¶ 15.

{¶6} Here the state voluntarily dismissed the case in 2015 under Crim.R. 48(A), which states, "The state may by leave of court and in open court file an entry of dismissal of an indictment, information, or complaint and the prosecution shall thereupon terminate." "When the state voluntarily dismisses a case, it is terminated. Terminated means done, finished, over, kaput." *State ex rel. Flynt v. Dinkelacker*, 156 Ohio App.3d 595, 2004-Ohio-1695, 807 N.E.2d 967, ¶ 23 (1st Dist.). Because the case has been dismissed and cannot be reinstated, the trial court patently and unambiguously lacked jurisdiction to consider West's motion. *Id.* at ¶ 28. For this reason, West's motion for made after the case has been dismissed is considered a

nullity, and any judgment or order entered on the motion is a nullity. *Id.* at ¶ 22. Thus, the entry denying West's motion is not a final appealable order and we lack jurisdiction over the appeal.

### III. CONCLUSION

{¶7} When a case is dismissed under Crim.R. 48(A), it is terminated. The trial court patently and unambiguously lacked jurisdiction to consider a post-dismissal discovery motion. The entry denying the motion is a nullity and is not a final appealable order. We lack jurisdiction over the appeal. The appeal is hereby DISMISSED.

**APPEAL DISMISSED. IT IS SO ORDERED.**

Abele, J. and McFarland, J.: Concur.

For the Court

BY: \_\_\_\_\_  
Marie Hoover, Administrative Judge

### NOTICE TO COUNSEL

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**