

COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2008-T-0018
MAURICE MOORE,	:	
Defendant-Appellant.	:	

Criminal appeal from the Court of Common Pleas, Case No. 2005 CR 0941.

Judgment: Appeal dismissed.

Dennis Watkins, Trumbull County Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W. , Warren, OH 44481-1092 (For Plaintiff-Appellee).

Maurice Moore, pro se, PID# A503-160, Belmont Correctional Institution, P.O. Box 540, St. Clairsville, OH 43950 (Defendant-Appellant).

MARY JANE TRAPP, J.,

{¶1} This matter is before this court on appeal from a judgment of the Trumbull County Court of Common Pleas issued on January 31, 2008. In the judgment, the court denied appellant's motion to vacate or suspend costs.

{¶1} According to Article IV, Section 3(B)(2), of the Ohio Constitution, an appellate court may review only final orders of inferior courts within its district. R.C. 2505.02 sets out five categories of final orders. Out of those five categories, the following two are relevant to the present case:

{¶2} “(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶3} “(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment.”

{¶2} A final order in a criminal case generally means the sentencing judgment. *State v. Shinkle* (1986), 27 Ohio App.3d 54, 55.

{¶3} Ohio courts have consistently held that the denial of a motion to vacate costs is not a final appealable order under R.C. 2505.02. *State v. Senk*, 8th Dist. No. 88524, 2007-Ohio-3414, 2007 Ohio App. LEXIS 3172; *State v. Fatica*, 11th Dist. No. 2002-G-2434, 2003-Ohio-4359, 2003 WL 21961446; *State v. Pasqualone* (2000), 140 Ohio App.3d 650; *State v. Spring* (July 21, 2000), 11th Dist. Nos. 99-A-0028 and 99-A-0029, 2000 Ohio App. LEXIS 3286.

{¶4} In the present case, appellant was convicted of aggravated robbery, felonious assault, and kidnapping and sentenced to serve four years in prison on April 10, 2006. No appeal was taken from that judgment. Instead, on November 15, 2007, appellant filed a motion for relief from judgment requesting that the trial court vacate his court costs. On January 31, 2008, the trial court denied the motion. It is from that judgment that appellant presently appeals to this court.

{¶5} The filing of a motion to suspend costs did not extend the time to file an appeal from the April 10, 2006 judgment imposing appellant's sentence and ordering court costs. Stated differently, appellant cannot collaterally attack the sentencing order to pay costs through an appeal from the denial of his motion for relief from judgment. Appellant's time to appeal the April 10, 2006 judgment has elapsed, and since the

denial of a motion to suspend costs does not affect a substantial right, the January 31, 2008 judgment is not a final appealable order. *Fatica*, supra.

{¶6} Accordingly, the appeal is hereby dismissed for lack of a final appealable order.

{¶7} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.