

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-02-012
	:	
- VS -	:	<u>OPINION</u>
	:	8/8/2011
	:	
NATHANIAL BLACKER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 08CR24737

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Nathanial Blacker, #505996, Southern Ohio Correctional Facility, P.O. Box 45699, Lucasville, Ohio 45669, defendant-appellant, pro se

PIPER, J.

{¶1} Defendant-appellant, Nathanial Blacker, appeals his conviction in the Warren County Court of Common Pleas for single counts of felonious assault and having a weapon while under detention. We affirm the decision of the trial court in part and dismiss part of the appeal.¹

1. Pursuant to Loc.R. 6(A), we sua sponte remove this case from the accelerated calendar and place it on the regular calendar for purposes of issuing this opinion.

{¶2} Blacker was charged and convicted of aggravated robbery in 2004, and sentenced to the Warren Correctional Institution. While serving his sentence there, Blacker stabbed a fellow inmate with an improvised knife, also known as a shank. Blacker was thereafter indicted for felonious assault and possession of a deadly weapon while under detention.

{¶3} Blacker proceeded to trial pro se, and was found guilty by a jury. Blacker appealed his conviction, and this court reversed the conviction because we found that Blacker's waiver of his right to have an attorney appointed was not intelligently, knowingly, and voluntarily made. *State v. Blacker*, Warren App. No. CA2008-07-094, 2009-Ohio-5519. Although we ordered a new trial on remand, we also disposed of several other issues regarding Blacker's appeal.

{¶4} Through his sixth assignment of error in his original appeal, Blacker argued that the trial court lacked proper jurisdiction to try and convict him because he is a "non-resident alien to the Federal United States" and as a "sovereign man" was not subject to the "secret jurisdiction" imposed over him by the trial court. We overruled this assignment of error after finding that the trial court held proper subject matter and personal jurisdiction over Blacker.

{¶5} On remand, Blacker was tried and found guilty by a jury, and the trial court sentenced Blacker to an aggregate sentence of three years concurrent to the sentence he was serving for aggravated robbery at the time of the shanking. Blacker now appeals his conviction after the second trial, raising the following assignments of error.

{¶6} Assignment of Error No. 1:

{¶7} "[THE TRIAL JUDGE] ACTED UNDER COLOR OF LAW WHEN HE ADJUDICATED THE CASE AND MOTIONS WHILE HAVING NO VALID OATH OF OFFICE FOR THE PUBLIC OFFICE OF JUDGE."

{¶8} In Blacker's first assignment of error, he claims that the judge who presided

over his trial was not a lawful judge and had no valid oath of office. This argument lacks merit.

{¶9} Blacker cites to the Northwest Territory Ordinance, the United States Constitution, as well as the Ohio Revised Code for the proposition that the trial judge did not properly hold his office and was therefore not qualified to enter the conviction and sentence. According to R.C. 3.23, a judge is required to take an oath of office. "Except for justices of the supreme court as provided in section 2701.05 of the Revised Code, each judge of a court of record shall take the oath of office on or before the first day of the judge's official term."

{¶10} Blacker does not point to any evidence on the record that the trial judge did not properly hold office or failed to take an oath as prescribed by R.C. 3.23. Instead, it is public record verified by this court that the trial judge who presided over Blacker's case on remand swore an oath of office on the first day of his term, and was properly seated as a judge for the Warren County Court of Common Pleas. This oath of office was properly certified and filed with the Ohio Supreme Court.

{¶11} Blacker's argument is wholly without merit, and his first assignment of error is overruled.

{¶12} Assignment of Error No. 2:

{¶13} "THE COURT OF COMMON PLEAS, FOR WARREN COUNTY, OHIO ABUSED ITS DISCRETION WHEN IT DENIED BOTH THE MOTION FOR RELIEF FROM JUDGMENT – PURSUANT TO CIVIL RULE 60(B) AND THE MOTION FOR RELEASE ON BAIL AND SUSPENSION OF SENTENCE PENDING APPEAL WITH NO FINDINGS OF FACT AND CONCLUSIONS OF LAW."

{¶14} In Blacker's second assignment of error, he claims that the trial court erred by not providing findings of facts and conclusions of law regarding his motion for relief from judgment and motion for release on bail.

{¶15} Blacker filed a "Motion for Relief from Judgment-Pursuant to Civil Rule 60(B)." The trial court properly converted this motion into a motion for postconviction relief pursuant to R.C. 2953.21. *State v Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545; *State v. Strunk*, Butler App. No. CA2010-09-085, 2011-Ohio-417.

{¶16} According to R.C. 2953.21 "(G) If the court does not find grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall enter judgment denying relief on the petition." "[F]indings of fact and conclusions of law are mandatory under R.C. 2953.21 if the trial court dismisses the petition." *State ex rel. Carrion v. Harris* (1988), 40 Ohio St.3d 19. The rationale is that findings apprise the petitioner of the grounds for the judgment and enable an appellate court to adequately review the decision. *Id.*

{¶17} In essence, Blacker's motion for relief from judgment asserts that the trial court lacked jurisdiction to try and or convict him of the charges against him. We recognize that Blacker's arguments regarding jurisdiction may be wholly without merit. However, a trial court must nonetheless make findings of facts and conclusions of law according to the statutory requirement. We recognize, as will be later discussed in Blacker's fourth assignment of error, that the jurisdictional question has already been answered by this court. Although the trial court could possibly apply the doctrines of law of the case or res judicata to Blacker's argument, the judgment entry denying relief from judgment must make reference to the portions of the record that establish why those doctrines may apply. See *State v. Lester* (1975), 41 Ohio St.2d 51, 55, (holding that "when a petition is summarily dismissed because all claims raised are barred by res judicata, the trial court should make and file findings of fact and conclusions of law with respect thereto, and, where appropriate, should specify the portions of the files and records which establish the bar of res judicata").

{¶18} "The Ohio Supreme Court has held that a judgment entry denying postconviction relief without findings of fact and conclusions of law is not a final, appealable

order." *State v. Chambers*, Licking App. No. 09CA0091, 2010-Ohio-3101, ¶18, citing *State ex rel. Ferrell v. Clark* (1984), 13 Ohio St.3d 3. Therefore, we dismiss Blacker's appeal specific to his motion for postconviction relief. The proper disposal of Blacker's petition for postconviction relief now requires Blacker to file a motion with the trial court moving the court to make the requisite findings of fact and conclusions of law, and the trial court's issue of these facts and conclusions. Only then can this court properly rule on the matters within Blacker's converted motion for postconviction relief.

{¶19} Regarding the trial court's decision to deny Blacker's motion for release on bail and suspension of execution of sentence pending appeal, the trial court was not required to make findings of fact or conclusions of law. According to App.R. 8(B), "application for release on bail and for suspension of execution of sentence after a judgment of conviction shall be made in the first instance in the trial court. Thereafter, if such application is denied, a motion for bail and suspension of execution of sentence pending review may be made to the court of appeals or two judges thereof."

{¶20} App.R. 8(B) does not require the trial court to make findings of fact or conclusions of law once it decides to deny release on bail and suspension of execution of sentence pending appeal. Moreover, Blacker was serving his sentence for aggravated robbery at the time he was convicted and sentenced for charges of felonious assault and having a weapon while under detention and would therefore not be eligible for release on bail or suspension of execution of sentence pending appeal.

{¶21} Blacker's second assignment of error is overruled specific to his motion for bail and suspension of sentence. His appeal specific to postconviction relief is dismissed to the extent that the trial court should have issued findings of fact and conclusions of law and without such, we currently do not have a final appealable order which divests an appellate court of jurisdiction.

{¶22} For ease of discussion, we will discuss Blacker's final two assignments of error together because they are interrelated.

{¶23} Assignment of Error No. 3:

{¶24} "THE COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO CONSTRUE THE STATUTES IN HARMONY WITH THE COMMON LAW."

{¶25} Assignment of Error No. 4:

{¶26} "THE COURT LACKS BOTH SUBJECT MATTER AND IN PERSONAM JURISDICTION OVER THE CASE NO. 08CR24737."

{¶27} In Blacker's third and fourth assignment of error, he claims that the trial court did not have jurisdiction over him, and that the trial court should have applied the UCC and recognized the lack of jurisdiction. These arguments are without merit.

{¶28} As previously discussed, this court has already addressed Blacker's arguments regarding the UCC and his status as "a living, breathing, flesh-and-blood, human being, non-corporator (sic), inhabitant upon the northwest territory, in the constitutional republic." Despite his refusal to recognize the United States' status as a fully formed nation, Ohio as a properly admitted state, and the authority of the Ohio Revised Code, we nonetheless determined that the trial court properly exercised jurisdiction over Blacker and his case. *State v. Blacker*, Warren App. No. CA2008-07-094, 2009-Ohio-5519. Therefore, the law of the case has established that jurisdiction is proper and the trial court did not err by dismissing Blacker's jurisdictional challenges.

{¶29} The "law of the case" doctrine provides that decisions made by a reviewing court regarding legal questions remain the law of that case for all subsequent proceedings at both the trial and appellate levels. *Nolan v. Nolan* (1984), 11 Ohio St.3d 1. In essence, the doctrine compels trial courts to adhere to a reviewing court's mandates. *Id.* "Absent extraordinary circumstances, such as an intervening decision by the Ohio Supreme Court, an

inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case." *State v. Prom*, Butler App. No. CA2004-07-174, 2005-Ohio-2272, ¶20.

{¶30} Because this court has held that the trial court properly exercised jurisdiction over Blacker and his case, the trial court did not err in dismissing Blacker's challenges to jurisdiction, and his third and fourth assignments of error are overruled.

{¶31} Judgment affirmed in part, and Blacker's appeal specific to his motion for postconviction relief is dismissed for lack of a final appealable order.

POWELL, P.J., and RINGLAND, J., concur.