

**IN THE COURT OF APPEALS  
THIRD APPELLATE DISTRICT  
UNION COUNTY**

**STATE OF OHIO**

**PLAINTIFF-APPELLANT**

**CASE NO. 14-05-08**

**v.**

**JENNIFER L. REED**

**OPINION**

**DEFENDANT-APPELLEE**

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**CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas  
Court**

**JUDGMENT: Appeal Dismissed.**

**DATE OF JUDGMENT ENTRY: October 31, 2005**

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**ATTORNEYS:**

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**BRYANT, J.**

{¶1} Plaintiff-appellant State of Ohio (“the State”) brings this appeal from the judgment of the Court of Common Pleas of Union County granting shock probation to defendant-appellee Jennifer Reed (“Reed”).

{¶2} On August 7, 2003, Reed was convicted of five felonies of the fourth degree and sentenced to a term of one year for each with the terms to be served concurrently. The trial court suspended the sentence and placed Reed on probation for three years. Reed subsequently absconded from supervision. On September 8, 2004, Reed was arrested for her probation violation. A hearing was held on the matter on November 3, 2004, and Reed admitted the violations alleged. The trial court then reimposed the original sentence of one year in prison, with credit for 55 days served. Reed was transported to the prison on November 10, 2004.

{¶3} On February 3, 2005, Reed filed a motion for judicial release. The State filed its memorandum in opposition on February 9, 2005. The hearing was held on February 17, 2005. At the hearing, the motion for judicial release was modified to a hearing on shock probation due to the timing of the original offense. The trial court then granted the motion for shock probation. The State appeals from this judgment raising the following assignment of error.

**The trial court erred in granting shock probation to [Reed] that was sentenced post-senate bill 2 for crimes committed in 1993**

**and then filed for “judicial release” outside the strict time parameters for filing for shock probation under R.C. 2947.061.**

{¶4} This court notes that the State failed to comply with Loc.R. 7(D) of the Third District Court of Appeals. This rule requires the appellant to attach a copy of the judgment entry to the brief. The rule also requires the filer of the brief to attach copies of all unreported opinions cited in the brief. The State failed to attach a copy of the judgment entry and did not attach copies of all unreported opinions cited.

{¶5} The Supreme Court of Ohio has addressed the question of whether denials of shock probation may be appealed. The Court held that the determination of a motion for shock probation pursuant to R.C. 2947.061 is a “special proceedings” as it was a purely statutory creation and was unavailable at common law. *State v. Coffman*, 91 Ohio St.3d 125, 2001-Ohio-273, 742 N.E.2d 644. However the Court ruled that shock probation does not affect a substantial right.

**Former R.C. 2947.061(B) did not create a legal right to shock probation. Instead, the statute committed decisions regarding shock probation to the plenary discretion of the trial court that imposed the sentence. R.C. 2947.061(C) provided that “[t]he authority granted by this section shall be exercised by the judge who imposed the sentence for which the suspension is being considered.” \* \* \* In deciding whether to grant or deny a motion for shock probation, this judge was given considerable discretion. R.C. 2947.071(B)’s terms were permissive in nature. R.C. 2947.071(B) provided, for example, that a trial court “may,” upon the defendant’s motion suspend further execution**

**of the sentence. \* \* \* R.C. 2947.071(B) also permitted the trial court to impose its own terms upon the granting of shock probation and required only that the terms imposed by the trial court include the required conditions of probation prescribed by R.C. 2951.02(C).**

**In matters of probation and parole, we have steadfastly refused to recognize a right of appeal absent a clear directive from the General Assembly that an appeal may be prosecuted. \* \* \***

**\* \* \* R.C. 2947.061(B) conferred substantial discretion while simultaneously making no provision for appellate review. In the absence of such an express provision, we can only conclude that a trial court's order denying shock probation pursuant to former R.C. 2947.061(B) is not a final appealable order.**

**\* \* \***

**[W]e conclude that a trial court's order denying shock probation pursuant to former R.C. 2947.061(B) is not a final appealable order regardless of whether the denial constitutes a constitutional or statutory violation.**

Id. at 127-129 (citations omitted). The Court however, remained silent about whether the granting of a motion for shock probation was appealable.

{¶6} In *State v. Cunningham*, 8<sup>th</sup> Dist. No. 85342, 2005-Ohio-3840, the question of whether the granting of a motion for judicial release is appealable is addressed by reviewing cases concerning shock probation as well as judicial release. This court notes that the statute providing for shock probation was repealed in 1996 and replaced with R.C. 2929.20, which provides for judicial release. Both shock probation and judicial release are special proceedings. Id. A final order is one that may be reviewed, affirmed, modified or reversed when it

affects a substantial right made in a special proceeding. *Id.* at ¶8 (citing R.C. 2505.02(B)(2)). “Therefore, granting or denying a motion for judicial release constitutes a ‘special proceeding’.” *Id.* Thus, the question is whether the granting of shock probation affects a substantial right.

{¶7} A substantial right is one entitled to enforcement or protection by the United States Constitution, the Ohio constitution, a statute, common law, or a procedural rule. R.C. 2505.02(A)(1). “[P]ostconviction relief issues arise after a criminal defendant’s substantial rights have been addressed, and are often not final appealable orders, absent statutory language designating them as such.” *Cunningham*, supra at ¶10. No provision for appeal of shock probation was provided. *Coffman*, supra. Thus, the granting of shock probation is not a final appealable order. *Cunningham*, supra at ¶12.

{¶8} Accordingly, this court lacks jurisdiction to hear the instant case and the State’s appeal is dismissed.

***Appeal Dismissed.***

**CUPP, P.J. and SHAW, J., concur.**

**/jlr**