

[Cite as *State v. Brooks*, 2010-Ohio-3262.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 09CA3329
vs.	:	
ULIOUS BROOKS,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

COUNSEL FOR APPELLANT:	Ulious Brooks, No. 453-172, Southern Ohio Correctional Facility, P.O. Box 45699, Lucasville, Ohio 45699, Pro Se
COUNSEL FOR APPELLEE:	Mark E. Kuhn, Scioto County Prosecuting Attorney, and Joseph L. Hale, Scioto County Assistant Prosecuting Attorney, 602 Seventh Street, Portsmouth, Ohio 45662

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 6-25-10

ABELE, J.

{¶ 1} This is an appeal from a Scioto County Common Pleas Court judgment that denied a “petition to vacate or set aside sentence” filed by Ulious Brooks, defendant below and appellant herein. Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

“THE TRIAL COURT ERRED BY ISSUING AND

SUMMONING THE APPELLANT-DEFENDANT TO APPEAR IN COURT WITH AN UNCONSTITUTIONAL SUMMONS UPON INDICTMENT SHEET, THAT WAS NOT SIGNED BY A JUDGE OF THE TRIAL COURT AS REQUIRED BY CRIMINAL RULE[S] (4 AND 9) AND R.C. 2935.18 AND FORM VI OF THE APPENDIX FORM OF THE OHIO RULES OF CRIMINAL PROCEDURE WHICH ALSO VIOLATED THE APPELLANT-DEFENDANT[‘S] FOURTEENTH AMENDMENT RIGHT [sic] DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION.”

SECOND ASSIGNMENT OF ERROR:

“THE TRIAL COURT ERRED BY NOT ALLOWING THE APPELLANT-DEFENDANT TO ATTEND THE MOTION TO VACATE OR SET ASIDE SENTENCE HEARING, WHICH VIOLATED THE APPELLANT [sic] FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION DUE PROCESS CLAUSE, AND WHICH ALSO VIOLATED R.C. 2953.22.”

THIRD ASSIGNMENT OF ERROR:

“THE TRIAL COURT ERRED BY VIOLATING THE APPELLANTS [sic] FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION BY HOLDING THE APPELLANT-DEFENDANT TO ANSWER TO A[N] INFAMOUS CRIME WITHOUT A PRESENTMENT OF AN INDICTMENT OF A GRAND JUROR [sic]. AND THE CONVICTION VIOLATED THE APPELLANT’S FOURTEENTH AMENDMENT [sic] OF THE UNITED STATES CONSTITUTION DUE PROCESS CLAUSE.”

FOURTH ASSIGNMENT OF ERROR:

“THE TRIAL COURT ERRED BY OVERRULING THE APPELLANTS [sic] PETITION TO VACATE OR SET ASIDE SENTENCE AND NOT GIVING A FINDING OF FACT AND CONCLUSION OF LAW, EVEN OVER OBJECTIONS, WHICH VIOLATED THE APPELLANTS [sic] FOURTEENTH AMENDMENT DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION[.]”

{¶ 2} On January 23, 2009, the Scioto County Grand Jury returned an

indictment charging appellant, then an inmate at Southern Ohio Correctional Facility (SOCF), with felonious assault. After appellant later agreed to plead guilty to a charge of attempted felonious assault, the trial court accepted his plea, found him guilty and sentenced him to serve one year imprisonment consecutively to the sentences he was already serving. No appeal was taken from that judgment.

{¶ 3} Appellant commenced the instant proceeding with his “petition to vacate or set aside sentence.” Although his claims are somewhat difficult to understand, they appear to include (1) an assertion that his conviction occurred “without an indictment from a grand jury,” and (2) the summons did not comply with R.C. 2935.18. The trial court's entry noted that the motion is “not well taken and overruled.” This appeal followed.

{¶ 4} We first proceed, out of order, to appellant's fourth assignment of error. Appellant asserts that the trial court erred by denying his motion without providing findings of fact and conclusions of law. Ohio law requires a trial court to make findings of fact and conclusions of law when it dismisses a petition or denies postconviction relief on the merits. R.C. 2953.21(C) & (G). In State v. Mapson (1982), 1 Ohio St.3d 217, 218, 438 N.E.2d 910, the Ohio Supreme Court held “R.C. 2953.21 mandates that a judgment denying post-conviction relief include findings of fact and conclusions of law, and that a judgment entry filed without such findings is incomplete . . .” The findings need only be sufficiently comprehensive and pertinent to the issue to form a basis upon which the evidence supports the conclusion. State v. Calhoun 86 Ohio St.3d 279, 714 N.E.2d 905, 1999-Ohio-102. If the judgment is incomplete without the findings, then the judgment will not constitute a final appealable order. See e.g. State

v. McDougald, Scioto App. No. 09CA3278, 2009-Ohio-4417, at ¶12, fn. 3; State v. Speed, Cuyahoga App. No. 85095, 2005-Ohio-1979, at ¶2; State v. Hickman, Summit App. No. 22279, 2005-Ohio-472, at ¶10; State ex rel. Baker v. Common Pleas Court (Feb. 17, 2000), Mahoning App. No. 830. In the absence of a final order, an appellate court has no jurisdiction to review the matter and the appeal must be dismissed. See, generally, State v. McGee, Cuyahoga App. No. 92026, 2010-Ohio-2082, at ¶6; State v. Phillis, Washington App. No. 06CA75, 2007-Ohio-6893, at ¶5.

{¶ 5} In the case sub judice, the trial court's October 27, 2009 entry does not contain findings of fact and conclusions of law. Thus, the entry does not constitute a final appealable order.¹

{¶ 6} Accordingly, because we have no final appealable order in this case, we are without jurisdiction to consider the appeal and we must dismiss this appeal.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the appeal be dismissed and appellee recover of appellant the

¹Appellee asserts that the trial court is not required to issue findings of fact and conclusions of law because the appellant's motion is not for postconviction relief. Appellee notes that the motion was filed "before the [appellant] entered into the plea agreement for which he was ultimately sentenced." However, according to the Notice of Appeal, the judgment appealed in this case was entered on October 5, 2009. The entry filed that day involved appellant's "petition to vacate or set aside sentence." Appellant filed that petition on July 21, 2009, a little over two months after the May 14, 2009 judgment of conviction and sentence. The trial court proceedings apparently were for postconviction relief and, pursuant to R.C. 2953.21, a trial court is required to make findings of fact and conclusions of law if it overrules the motion.

costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & Kline, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, 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.