

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

State of Ohio,	:	Case No. 15CA6
Plaintiff-Appellee,	:	<u>DECISION AND</u>
v.	:	<u>JUDGMENT ENTRY</u>
Melanie A. Ogle,	:	
Defendant-Appellant.	:	RELEASED: 05/11/2015

APPEARANCES:

Melanie A. Ogle, Rockbridge, Ohio, Pro Se Appellant.

Timothy P. Gleeson, Special Prosecuting Attorney, Logan, Ohio, for Appellee.

McFARLAND, A.J.,

{¶1} Ogle filed an appeal from an entry denying her motion for findings of fact and conclusions of law. After reviewing the notice of appeal filed in this matter, we issued an order directing Ogle to file a memorandum addressing whether the entry appealed from is a final appealable order. Ogle filed a response in which she argues that she filed a timely post-conviction petition, but the trial court did not issue findings of facts and conclusions of law. Therefore, she filed a separate motion asking the trial court to issue them. She argues that the trial court's refusal to issue findings of facts and conclusions of law is a final appealable order. The state filed a motion to summarily dismiss the appeal on res judicata grounds, arguing that the relief Ogle seeks has already been denied, appealed, and decided on appeal in the consolidated appeal of *State v. Ogle*, 4th Dist. Hocking App. Nos. 11CA29, 11CA32, 12CA2, 12CA11, 12CA12, and 12CA19, 2013-Ohio-3420. After

reviewing the memoranda and the relevant law, we hereby sua sponte **DISMISS** this appeal because the entry appealed from is not a final, appealable order.

I.

{¶2} In August 2011, a jury convicted Ogle of one count of assault on a peace officer. She was sentenced to six months in jail, assessed a fine and ordered to pay restitution. Ogle filed various appeals, which were consolidated and resolved. This current appeal arises out of a motion Ogle filed on February 19, 2015 in which she asked the trial court for findings of facts and conclusions of law on the trial court's January 9, 2012 entry denying her "Motion for Recusal and for Renewed Stay of Execution of Sentence." In her motion for recusal and renewed stay filed in November 2011, Ogle sought to have the judge recuse himself and for a stay of her sentence pending a decision on her motion for a new trial, which was filed contemporaneously, and her then pending appeals. She had filed an earlier motion for a new trial in August 2011, which the trial court had previously denied in September 2011.

{¶3} On January 9, 2012, the trial court addressed a number of Ogle's pending motions, including the motion for recusal and stay of sentence and the second motion for a new trial. In the entry, the trial court overruled the pending motions, stating that it had previously denied Ogle's motion for a new trial and the second motion for a new trial raised no new issues. The trial court's denial of her motion for a new trial mooted her motion for a stay pending a new trial. And, as for a stay of her sentence pending appeal, the trial court held:

The Court revoked the Defendant's Bond because she advised the Court, in open Court, that she would no longer comply with the rules of her recognizance bond (payment of fees) and she violated the rules of the house arrest agreement. The Court is not required to conduct a hearing on these matters but it did conduct a hearing at which the Defendant advised the Court

that she would not continue to comply with the conditions of her bond. Any further bond request should be made in the Court of Appeals.

Entry, January 9, 2012; App.R. 8 (if a trial court denies an application for release on bail or for suspension of execution of sentence pending appeal, an application may be made to the court of appeals).

{¶4} Three years after the trial court denied Ogle’s motion for a stay of the execution of her sentence, Ogle filed a “Motion for Findings of Fact and Conclusions of Law” in which she mischaracterizes her prior November 2011 motion for stay of execution of sentence as a “post-conviction relief” motion, re-argues a host of legal arguments previously raised in support of her motion for a new trial and in her prior appeals, and argues that she is entitled to findings of facts and conclusions of law. The trial court denied her motion in an entry on February 23, 2015. It is from this entry that Ogle appeals.

II.

{¶5} Ogle’s motion for renewed stay of execution of sentencing was not a “post-conviction relief petition.” Thus, the trial court’s entry denying Ogle’s motion for findings of fact and conclusion of law on her motion for a stay of execution of sentence is not a final appealable order. Appellate courts in Ohio have jurisdiction to review the final orders or judgments of inferior courts within their district. Section 3(B)(2), Article IV of the Ohio Constitution; R.C. 2501.02. A final appealable order is one that affects a “substantial right” and either determines the action or is entered in a special proceeding. R.C. 2501.02(B)(1) & (2). If a judgment is not final and appealable, then an appellate court has no jurisdiction to review the matter and must dismiss the appeal. *Production Credit Assn. v. Hedges*, 87 Ohio App.3d 207, 210 at fn. 2 (4th Dist. 1993); *Kouns v. Pemberton*, 84 Ohio App. 3d 499, 501 (4th Dist. 1992).

{¶6} Here, after a jury found Ogle guilty of assault, she was sentenced to six months in jail, assessed a fine and ordered to pay restitution. Ogle initially sought a stay of the execution of her sentence pending a new trial and pending her appeals. The trial court denied her motion. We affirmed her judgment of conviction on appeal. See *State v. Ogle*, 4th Dist. Hocking App. Nos. 11CA29, 11CA32, 12CA2, 12CA11, 12CA12, and 12CA19, 2013-Ohio-3420. Her sentence has long since been served. Her underlying criminal case has been finally resolved and is no longer pending.

{¶7} When the trial court denied Ogle's application for stay of execution of sentence, her legal recourse was to apply to the court of appeals pursuant to App.R. 8. *Brown v. Rogers*, 71 Ohio St.3d 570, 645 N.E.2d 1241 (1995). There is no procedure recognized by statute or rule which would allow Ogle to wait three years, file a motion with the trial court for findings of facts and conclusions of law, then appeal a denial of that motion. There is no procedure specifically prescribed by the rules of criminal procedure concerning a court's obligation to issue findings of fact and conclusions of law on a motion to stay execution so we look to the rule of civil procedure. Crim.R. 57(B). Civ. R. 52 states that findings of facts and conclusions of law required under that rule "are unnecessary upon all other motions, including those pursuant to Rule 12, Rule 55 and Rule 56. Therefore, Ogle had no substantial right to findings of fact or conclusions of law and the trial court's order denying her request is not a final appealable order. And, because the criminal case has been finally resolved and no longer pending, and she has served her six-month sentence, any argument Ogle might make to use under App.R. 8 concerning the trial court's denial of her motion for stay of execution is moot. *State v. Young*, 4th Dist. Adams App. No. 03CA773, 2004-Ohio-372 (an appeal from a trial court's denial for bond pending appeal was dismissed as moot where the underlying criminal case was resolved).

As a result, the trial court's entry did not affect a "substantial right" and therefore, it is not a final, appealable order and we lack jurisdiction to consider this appeal.

III.

{¶8} We conclude that Ogle's motion for findings of facts and conclusions of law as to the trial court's denial of her stay of execution of sentence was not authorized under Crim.R. 46, App.R. 8, Crim.R. 57(B) or Civ.R. 52. The trial court's denial of it did not affect a substantial right and the entry is not a final, appealable order. Because the trial court's entry denying her motion is not a final appealable order, we do not have jurisdiction to consider an appeal from that entry. Therefore, we sua sponte **DISMISS** this appeal.

{¶9} The clerk shall serve a copy of this order on all counsel of record at their last known addresses. The clerk shall serve appellant by certified mail, return receipt requested. If returned unserved, the clerk shall serve appellant by ordinary mail.

APPEAL DISMISSED. MOTION DENIED AS MOOT. COSTS TO APPELLANT.

IT IS SO ORDERED.

Harsha, J. & Abele, J.: Concur.

FOR THE COURT

Matthew W. McFarland
Administrative Judge