

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

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| STATE OF OHIO, | : | Case No. 16CA1029 |
| Plaintiff-Appellee, | : | |
| v. | : | <u>DECISION AND</u> |
| ROSCOE T. CAMPBELL, | : | <u>JUDGMENT ENTRY</u> |
| Defendant-Appellant. | : | RELEASED: 06/06/2017 |

APPEARANCES:

Roscoe T. Campbell, Lebanon, Ohio, pro se appellant.

David Kelley, Adams County Prosecuting Attorney, and Kris D. Blanton, Adams County Assistant Prosecuting Attorney, West Union, Ohio, for appellee.

Harsha, J.

{¶1} Roscoe T. Campbell appeals the dismissal of his motion for reconsideration of a prior motion to vacate or suspend court costs and fines. Campbell argues that the trial court had jurisdiction to consider his original motion concerning costs and fines and therefore it should have granted his motion for reconsideration. Because the trial court order Campbell appeals is not a final appealable order, we dismiss this appeal for lack of jurisdiction.

I. FACTS

{¶2} A jury convicted Campbell of two counts of rape of a minor child less than thirteen years of age and the trial court sentenced him accordingly. In his direct appeal we reversed that portion of the judgment imposing consecutive sentences and remanded for resentencing. See *State v. Campbell*, 4th Dist. Adams No. 13CA969, 2014-Ohio-3860. After that occurred Campbell appealed again but we found no merit to his appeal

and affirmed the judgment. See *State v. Campbell*, 4th Dist. Adams No. 15CA1012, 2016-Ohio-415.

{¶3} Several months later Campbell filed a “Motion to Vacate/Suspend Court Costs and Fines and/or Clarify Previous Judgment Entry Order” asking the trial court to vacate or suspend court costs and the fine, or clarify the portion of the judgment entry that imposed the fine and costs.

{¶4} The trial court dismissed the motion on the ground that it lacked jurisdiction to rule on it: “This Court finds it is without authority to rule on this motion, and therefore the same is dismissed.” Campbell did not appeal this order. Instead, Campbell filed a “Request for Reconsideration of Order to Vacate/Suspend Court Costs and Fines” in which he asked the court to reconsider its decision and argued that a trial court has jurisdiction to waive, suspend or modify the payment of costs at the time of sentencing or at any time thereafter under R.C. 2947.23(C). The trial court dismissed the motion for reconsideration on the ground it lacked authority to rule on it. Campbell appeals this order.

II. ASSIGNMENT OF ERROR

{¶5} Campbell assigns the following error for our review:

TRIAL COURT ABUSED IT'S [SIC] DISCRETION WHEN IT DENIED PRO SE-APPELLANT'S MOTION TO VACATE/SUSPECT [SIC] COURT COSTS AND FINES.

III. LAW AND ANALYSIS

{¶6} Before we address the merits of the appeal, we must decide whether we have jurisdiction to do so. Under Section 3(B)(2), Article IV of the Ohio Constitution, courts of appeals have “such jurisdiction as may be provided by law to review and affirm,

modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district.” R.C. 2505.03(A) similarly limits the appellate jurisdiction of courts of appeals to the review of final orders, judgments, or decrees. If a judgment is not final and appealable, an appellate court has no jurisdiction to review the matter and must dismiss the appeal. *Eddie v. Saunders*, 4th Dist. Gallia No. 07CA7, 2008–Ohio–4755, ¶ 11. If the parties do not raise the jurisdictional issue, we must raise it sua sponte. *State v. Locke*, 4th Dist. Scioto No. 11CA3409, 2011–Ohio–5596, ¶ 4.

{¶7} A criminal conviction becomes final upon the entry of the sentence. See Crim.R. 32(C) and *State v. Carlisle*, 131 Ohio St.3d 127, 2011–Ohio–6553, 961 N.E.2d 671, ¶ 11. A judgment of conviction is final when the order sets forth (1) the fact of the conviction; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court. *Id.* Crim.R. 32(C) also provides that a judgment becomes final when the trial court reduces it to writing and the clerk enters it on the journal. See *State v. Purnell*, 171 Ohio App.3d 446, 2006–Ohio–6160, 871 N.E.2d 613 (1st Dist.) citing *State v. Danison*, 105 Ohio St.3d 127, 2005–Ohio–81, 823 N.E.2d 444, at ¶ 6. Thus, Campbell’s judgment of conviction, which included the imposition of court costs and fines, is a final order.

{¶8} Generally, a trial court lacks jurisdiction to reconsider its own valid judgment of conviction; because Ohio criminal law is statutory in nature, the court only has the power conferred by statute or rule. *State v. Glenn*, 4th Dist. Adams Nos. 11CA931, 11CA932, 2012–Ohio–3190, ¶ 8; Painter & Pollis, *Baldwin’s Ohio Appellate Practice*, Section 1:17 (Nov. 2016 update) (“In the criminal context, ‘[t]here is no authority for the filing of a motion for reconsideration’ of a final judgment, and such a motion is generally

‘a nullity.’ ”). However, there are certain statutory exceptions to the general prohibition against a trial court’s post-judgment jurisdiction.

{¶9} A trial court does retain jurisdiction to “waive, suspend, or modify the payment of the costs of prosecution * * * at the time of sentencing or at any time thereafter” under R.C. 2947.23(C). See *State v. Farnese*, 4th Dist. Washington No. 15CA11, 2015-Ohio-3533, ¶15-16 (finding that the new version of R.C. 2947.23(C) that went into effect March 22, 2013 provides the trial court with continuing jurisdiction to waive suspend or modify court costs); *State v. Sizemore*, 5th Dist. Richland No. 15CA18, 2016-Ohio-1529, ¶35; *State v. Chase*, 2d Dist. Montgomery No. 26238, 2015-Ohio-545, ¶ 9-10 (finding that the trial court had jurisdiction to consider defendant’s motion to vacate or delay court costs and fees, reversing the trial court’s decision that overruled the motion, and remanding the cause to the trial court to consider the motion); *State v. Price*, 2015-Ohio-4592, 46 N.E.3d 1141, ¶2 (8th Dist.) (finding that changes to R.C. 2947.23(C) effective March 22, 2013, gives the trial court jurisdiction to consider motions to vacate or waive court costs at “any time” and affirming a trial court’s order granting defendant’s motion to waive court costs that was brought five years after sentencing).

{¶10} Additionally, a trial court retains jurisdiction to suspend any financial sanction imposed under R.C. 2929.18(A) or (B) if certain conditions are met under R.C. 2929.18(G). See R.C. 2929.18(G); *State v. T.M.*, 8th Dist. Cuyahoga No. 101194, 2014-Ohio-5688, ¶ 7-11 (finding that R.C. 2929.18(G) provides a “limited grant of continuing jurisdiction” to suspend all or a portion of a fine if a person has successfully completed all aspects of the sentence); *State v. Collier*, 184 Ohio App.3d 247, 2009-Ohio-4652, 920 N.E.2d 416, ¶ 14 (10th Dist.) (“If defendant is unable to pay the \$20,000 fine after he has

been released from prison, he can seek relief under R.C. 2929.18(G), which provides courts an avenue to relieve an indigent person of his or her obligation to pay a fine after the person has completed the incarceration period of his or her sentence.”).

{¶11} Thus the trial court retained jurisdiction after it issued a final judgment of conviction to consider motions concerning court costs and fines under R.C.2947.23(C) and R.C. 2929.18(G). However, Campbell did not appeal the trial court’s June 2016 order dismissing his motion to vacate/suspend costs. Instead, he filed a motion for reconsideration and then appealed the August 2016 order dismissing his motion for reconsideration. But because Campbell’s motion for reconsideration was a legal nullity the trial court properly dismissed it for lack of jurisdiction. Moreover, a trial court’s order denying a motion for reconsideration is not a final appealable order granting us jurisdiction to review the merits of Campbell’s assignment of error. *See, e.g., McCualsky v. Appalachian Behavioral Healthcare*, 10th Dist. Franklin No. 16AP-442, 2017-Ohio-1064, ¶ 13. Our jurisdiction is limited to determining whether we have jurisdiction to proceed. We conclude we do not.

IV. CONCLUSION

{¶12} The order dismissing Campbell’s motion for reconsideration is not a final appealable order because the motion was a legal nullity. Therefore, Campbell cannot appeal from the trial court’s denial of his motion for reconsideration and his appeal is dismissed for lack of jurisdiction.

{¶13} APPEAL DISMISSED. COSTS TO APPELLANT. IT IS SO ORDERED.

JUDGMENT ENTRY

It is ordered that the APPEAL BE DISMISSED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

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

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, 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.