

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Respondent - Appellee	:	Hon. Patricia A. Delaney, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
TROY LEE CORNS	:	Case No. 2018CA00117
	:	
Petitioner- Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 92-CR- 2569
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JUDGMENT:	Dismissed
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DATE OF JUDGMENT:	December 3, 2018
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APPEARANCES:

For Respondent-Appellee

JOHN D. FERRERO
Prosecuting Attorney

By: RONALD MARK CALDWELL
Assistant Prosecuting Attorney
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For Petitioner-Appellant

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Baldwin, J.

{¶1} Petitioner-appellant Troy Lee Corns appeals from the July 26, 2018 Judgment Entry of the Stark County Court of Common Pleas denying his Motion for Judicial Notice of the Statute of Limitations.

STATEMENT OF THE FACTS AND CASE

{¶2} On July 27, 1992, the Stark County Grand Jury indicted appellant, Troy Corns, on one count of rape with a force specification in violation of R.C. 2907.02, one count of attempted rape in violation of R.C. 2907.02/2923.02 and one count of gross sexual imposition in violation of R.C. 2907.05. The charges arose from incidents involving the daughter of appellant's live-in girlfriend.

{¶3} A jury trial commenced on October 16, 1992. The jury found appellant guilty of the rape and gross sexual imposition counts. The remaining charge was dismissed. By Judgment Entry filed on October 27, 1992, the trial court sentenced appellant to an aggregate term of life imprisonment. Appellant's convictions and sentence were upheld on appeal. See, *State v. Corns*, 5th Dist. Stark App. No. CA-9172, 1993 WL 500514 (November 15, 1993). The Ohio Supreme Court denied appellant's request to file a delayed appeal.

{¶4} In the spring of 2005, a hearing was held to determine appellant's status pursuant to the Sex Offender Registration Act, R.C. Chapter 2950. By Judgment Entry filed April 19, 2005, the trial court classified appellant as a "sexual predator" pursuant to R.C. 2950.09.

{¶5} Appellant then appealed. Pursuant to an Opinion filed on January 30, 2006 in *State v. Corns*, 5th Dist. Stark App. No. 2005CA00133, 2006 -Ohio- 399, this Court

affirmed the judgment of the trial court. Appellant then filed an appeal with the Ohio Supreme Court, but the appeal was dismissed.

{¶6} On March 31, 2009, appellant filed a “Motion for Dismissal” citing to R.C. 2953.21, Ohio’s Post-Conviction Relief statute. Appellee filed a response and a Motion for Summary Judgment on November 17, 2009, arguing, in part, that appellant’s petition was untimely. As memorialized in a Judgment Entry filed on December 15, 2009, the trial court denied the petition, finding that it was untimely filed. Appellant did not appeal.

{¶7} On January 26, 2011, appellant filed a “Petition to Vacate Sentence” pursuant to R.C. 2953.21. Pursuant to a Judgment Entry filed on January 28, 2011, the trial court denied the same. Appellant did not appeal.

{¶8} On November 14, 2017, appellant filed a “Motion to Vacate Sentence”, again relying on R.C. 2953.21. He also filed a Motion for Summary Judgment on December 29, 2017. Appellee, on January 19, 2018, filed a response to appellant’s Petition for Post-Conviction Relief and a Motion to Dismiss and for Summary Judgment. On February 5, 2018, appellant filed a Motion to Strike appellee’s response since it had been filed outside of the ten-day period set forth in R.C. 2953.21(E). The trial court denied the Motion to Strike via a Judgment Entry filed on February 7, 2018.

{¶9} Appellant, on July 16, 2018, filed a “Motion for Judicial Notice of the Statute of Limitation (SIC)”. Appellant, in his motion, stated, in relevant part, as follows:

{¶10} “[appellant] Motions this court to take judicial notice of the statute of limitation (SIC), predicated upon the authority of the statutory (SIC) requirement of one hundred eighty days to render a ruling upon a petition for post-conviction relief...”

{¶11} The trial court denied appellant's motion on July 26, 2018 and appellant is now appealing from the trial court's July 26, 2018 Judgment Entry, raising the following assignment of error:

{¶12} "I. THE TRIAL COURT ABUSED IT'S (SIC) DISCRETION BY FAILING TO FILE IT'S (SIC) RULING WITHIN THE STATUTE TIME ALLOTMENT, WHICH CONSTITUTES A VIOLATION OF APPELLANT'S RIGHT TO DUE PROCESS UNDER U.S. CON. AMEND. VI AND XIV AND O. CON, ART. I, [SECTION] 10."

{¶13} As an initial matter, we shall address appellant's argument that there is no final, appealable order. Even if a party does not raise the issue, this court must address, sua sponte, whether there is a final appealable order ripe for review. *State ex rel. White vs. Cuyahoga Metro. Hous. Aut.*, 79 Ohio St.3d 543, 544, 1997-Ohio-366, 684 N.E.2d 72.

{¶14} Appellate courts have jurisdiction to review the final orders or judgments of lower courts within their appellate districts. Section 3(B) (2), Article IV, Ohio Constitution. If a lower court's order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *General Acc. Ins. Co. vs. Insurance of North America*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989).

{¶15} To be final and appealable, an order must comply with R.C. 2505.02 and Civ.R. 54(B), if applicable.

{¶16} R.C. 2502.02(B) provides the following in pertinent part:

{¶17} (B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶18} (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶19} (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment.

{¶20} (3) An order that vacates or sets aside a judgment or grants a new trial;

{¶21} (4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶22} (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶23} (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶24} (5) An order that determines that an action may or may not be maintained as a class action;

{¶25} (6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 (renumbered as 5164.07 by H.B. 59 of the 130th general assembly¹), and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code;

{¶26} (7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.

{¶27} To qualify as final and appealable, the trial court's order must satisfy the requirements of R.C. 2505.02, and if the action involves multiple claims and/or multiple parties and the order does not enter judgment on all the claims and/or as to all parties, as is the case here, the order must also satisfy Civil Rule 54(B) by including express language that “there is no just reason for delay.” *Int’l. Brotherhood of Electrical Workers, Local Union No. 8 v. Vaughn Indus., LLC*, 116 Ohio St.3d 335, 2007–Ohio–6439, 879 N.E.2d 101. However, we note that “the mere incantation of the required language does not turn an otherwise non-final order into a final appealable order.” *Noble v. Colwell*, 44 Ohio St.3d 92, 96, 540 N.E.2d 1381 (1989). Civ.R. 54(B) does not alter the requirement that an order must be final before the no just reason for delay language renders it appealable. *Gen. Acc. Ins. Co.* at 21, citing *Douthitt v. Garrison*, 3 Ohio App.3d 254, 255, 444 N.E.2d 1068 (9th Dist.1981). Therefore, a partial final order is not appealable pursuant to Civ. R. 54(B) if pending unresolved counterclaims touch upon the very same facts, legal issues and circumstances as the original claim. See *Portco, Inc. v. Eye Specialists, Inc.*, 173 Ohio App.3d 108, 2007–Ohio–4403, 877 N.E.2d 709, ¶ 10 (4th Dist.).

{¶28} In the case sub judice, appellant is appealing from the trial court’s July 26, 2018 Judgment Entry denying appellant’s “Motion for Judicial Notice of Statute of Limitation (SIC).” The trial court’s denial does not affect a substantial right, determine the action, or prevent a judgment and, therefore, is not a final appealable order. We concur with appellee, therefore, that this court has no jurisdiction over appellant’s appeal.

{¶29} Appellant's appeal is, therefore, dismissed for lack of a final appealable order.

By: Baldwin, J.

Hoffman, P.J. and

Delaney, J. concur.