

[Cite as *State v. Speed*, 2005-Ohio-1979.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 85095

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee	:	JOURNAL ENTRY
	:	and
vs.	:	OPINION
	:	
WILLIE SPEED,	:	
	:	
Defendant-Appellant	:	

DATE OF ANNOUNCEMENT OF DECISION	:	APRIL 28, 2005
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CHARACTER OF PROCEEDING:	:	Criminal appeal from
	:	Common Pleas Court
	:	Case No. CR-436669

JUDGMENT	:	DISMISSED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

For plaintiff-appellee:	William D. Mason, Esq. Cuyahoga County Prosecutor BY: Mary McGrath, Esq. Assistant County Prosecutor The Justice Center - 8 <sup>th</sup> Floor 1200 Ontario Street Cleveland, Ohio 44113
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For defendant-appellant:	Robert L. Tobik, Esq. Cuyahoga County Public Defender BY: John T. Martin, Esq. Assistant Public Defender 1200 West Third Street, N.W. 100 Lakeside Place Cleveland, Ohio 44113-1569
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Willie Speed, Pro Se

Inmate No. 453-732  
Mansfield Correctional Institute  
P.O. Box 788  
Mansfield, Ohio 44901-0788

MICHAEL J. CORRIGAN, J.:

{¶ 1} In 2003, the court found petitioner Willie Speed guilty of two counts of rape, one count of attempted rape, three counts of kidnapping, four counts of impersonating a police officer, and possession of criminal tools. We affirmed the conviction in *State v. Speed*, Cuyahoga App. No. 83746, 2004-Ohio-5211, but remanded for resentencing. Speed then filed two petitions for postconviction relief. The first-filed petition, made through counsel, raised grounds of ineffective assistance of counsel. The second petition, filed pro se, raised similar ineffective assistance of counsel claims, and also raised evidentiary issues in a section titled "actual innocence." The state filed a motion to dismiss the petitions on grounds that the claims asserted therein were barred by res judicata. The court granted the state's motion as to both petitions.

{¶ 2} We lack jurisdiction to hear this appeal because the court failed to issue findings of fact and conclusions of law when it dismissed the petitions. R.C. 2953.21(C) states, "[i]f the court dismisses the petition, it shall make and file findings of fact and conclusions of law with respect to such dismissal." Likewise, R.C. 2953.21(G) states, "[i]f the court does not find grounds for granting relief, it shall make and file findings of

fact and conclusions of law and shall enter judgment denying relief on the petition." In *State v. Calhoun*, 86 Ohio St.3d 279, 291-292, 1999-Ohio-102, the supreme court stated that "[t]he findings need only be sufficiently comprehensive and pertinent to the issue to form a basis upon which the evidence supports the conclusion."

{¶ 3} The subject journal entry states in its entirety:

{¶ 4} "State's motion to dismiss defendant's petition to vacate or set aside judgment of conviction or sentence is granted.

{¶ 5} "State's motion to dismiss defendant's petition for post-conviction relief is granted."

{¶ 6} This journal entry gives no findings of fact or conclusions of law from which we can divine the court's rationale for granting the state's motions to dismiss. And while Speed did file a request for findings of fact, he filed his notice of appeal before the court could issue them. This being the case, we lack a final, appealable order and must dismiss the appeal. See *State v. Mapson* (1982), 1 Ohio St.3d 217, 218.

Dismissed.

This appeal is dismissed.

It is, therefore, ordered that appellee recover from appellant its costs herein taxed.

It is ordered that a special mandate be sent to the Common Pleas Court directing said court to carry this judgment into execution.

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

MICHAEL J. CORRIGAN  
JUDGE

FRANK D. CELEBREZZE, JR., P.J., and

CHRISTINE T. McMONAGLE, J., CONCUR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R.22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).