

[Cite as *State v. Henderson*, 2006-Ohio-2876.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86933

STATE OF OHIO

Plaintiff-appellee

vs.

GEORGE HENDERSON

Defendant-appellant

JOURNAL ENTRY

AND

OPINION

DATE OF ANNOUNCEMENT  
OF DECISION:

JUNE 8, 2006

CHARACTER OF PROCEEDING:

Criminal appeal from Common  
Pleas Court, Case No. CR-228278

JUDGMENT:

DISMISSED.

DATE OF JOURNALIZATION:

APPEARANCES:

For plaintiff-appellee:

WILLIAM D. MASON, ESQ.  
Cuyahoga County Prosecutor  
MATTHEW E. MEYER, ESQ.  
Assistant County Prosecutor  
The Justice Center, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

For defendant-appellant:

GEORGE HENDERSON, PRO SE  
Inmate No. 207-034  
Marion Correctional Institution  
P.O. Box 57  
Marion, Ohio 43301-0057

KARPINSKI, P.J.:

{¶ 1} Defendant, George Henderson, appeals the trial court's failure to make findings when it rejected his application for DNA testing. Defendant was convicted in a jury trial of aggravated murder in 1988. On January 26, 2004, he filed an application for DNA testing pursuant to R.C. 2953.73 et seq. On August 10, 2005, the trial court denied this application in a judgment entry reading, "Defendant's application for DNA testing is denied."

{¶ 2} Defendant states one assignment of error:

I. THE TRIAL COURT FAILED TO COMPLY WITH THE STRICT COMMANDS OF R.C. 2953.73(D) THAT MANDATES THE REASONS FOR THE REJECTION OF APPELLANT'S APPLICATION FOR DNA TESTING.

{¶ 3} The state concedes the trial court erred in failing to provide reasons for its denial of defendant's application.

{¶ 4} R.C. 2953.73(D) states in pertinent part:

\*\*\* Upon making its determination, the court shall enter a judgment and order that either accepts or rejects the application and that includes within the judgment and order the reasons for the acceptance or rejection as applied to the criteria and procedures set forth in sections 2953.71 to 2953.81 of the Revised Code. \*\*\*.

{¶ 5} This court held in *State v. Newell*, Cuyahoga App. No. 85280, 2005-Ohio-2853:

In the instant case, the trial court's judgment entry fails to set forth any reasons for denying appellant's application. This is contrary to what R.C. 2953.73(D) mandates. In *State v. Mapson* (1982), 1 Ohio St.3d 217, 1 Ohio B. 240, 438 N.E.2d 910, HN3, the Ohio Supreme Court held that a judgment entry that does not include statutorily mandated findings does not constitute a final appealable order. See, also, *State v. Hickman*, Summit App. No. 22279, 2005-Ohio-472 (holding that there was no final appealable order when "the trial court's journal entry was insufficient to apprise appellant of the reasons for dismissing his post conviction application for DNA testing or to enable this Court to properly determine appellant's appeal on the merits"). Accordingly, we dismiss this appeal for lack of a final appealable order.

Id. ¶6.

{¶6} As in *Newell*, the case at bar is not a final appealable order because the trial court failed to make the mandatory findings as required by statute. The case is, therefore, dismissed.

It is ordered that appellee recover of appellant its costs herein taxed.

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

DIANE KARPINSKI  
PRESIDING JUDGE

MARY EILEEN KILBANE, J., AND

MICHAEL J. CORRIGAN, 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).