[Cite as *State v. Koreisl*, 2009-Ohio-4195.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92068

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MARK KOREISL

DEFENDANT-APPELLANT

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-502332

BEFORE: Celebrezze, J., McMonagle, P.J., and Boyle, J.

RELEASED: August 20, 2009

JOURNALIZED:

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellant, Mark Koreisl, appeals the trial court's decision to deny his motion titled "Petition to Vacate or Set Aside Judgment of Conviction or Sentence" after his convictions for rape, importuning, and gross sexual imposition. Because this court lacks authority to hear appellant's appeal, the case must be dismissed for lack of a final appealable order.

{¶ 2} Appellant was arraigned in October 2007 on charges relating to the sexual abuse of a girl under age 10. After a bench trial held on January 17, 2008, appellant was found guilty of one count of rape,[1] one count of importuning,[2] and four counts of gross sexual imposition,[3] all with sexually violent predator specifications. Appellant was sentenced to a prison term of 15 years to life with one day of solitary confinement on each anniversary of his victim's birth. A detailed recitation of the facts in this underlying case is available in *State v. Koreisl*, Cuyahoga App. No. 90950, 2009-Ohio-1238 ("*Koreisl I*"). In *Koreisl I*, appellant appealed his convictions citing three assignments of error.[4] This court affirmed his convictions.

{¶ 3} On May 15, 2008, after filing a notice of appeal in *Koreisl I*, appellant filed a petition for relief from judgment pursuant to R.C. 2953.21

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[1] R.C. 2907.02(A)(1)(b), a first degree felony.

[2] R.C. 2907.07(A), a fourth degree felony.

[3] R.C. 2907.05(A)(4), a third degree felony.

[4] Appellant challenged his convictions asserting insufficiency of the evidence, that his convictions were against the manifest weight of the evidence, and that the maximum and consecutive sentences imposed were contrary to law.

based on ineffective assistance of counsel, titled "Petition to Vacate or Set Aside Judgment of Conviction or Sentence," and also petitioned the trial court to appoint counsel and expert assistance to help execute this claim. The trial judge denied appellant's motion for postconviction relief without making any findings of fact or conclusions of law. Appellant's motion for counsel and an expert was also denied.

{¶ 4} Appellant appeals these decisions citing two assignments of error:

{¶ 5} "The trial court improperly dismissed the petition without making findings of fact and conclusions of law in this regard."

{¶ 6} "The trial court erred in refusing to appoint either counsel or an investigator for Mr. Koreisl for purposes of allowing him to present his post-conviction petition."

Law and Analysis

{¶ 7} The motion for relief made by appellant clearly stated it was a motion founded on R.C. 2953.21, even though it was not titled as such. "It is the substance of things and not the superficial form that should determine such controversies, and if there is any irregularity in the form of a motion, it should, under another provision of the code, be disregarded, unless it causes some prejudice to the person or party against whom the motion is addressed." *State ex rel. Barnes v. Kimes* (1908), 11 Ohio C.C. (N.S.) 77. Appellant's motion specifically referenced R.C. 2953.21 and set forth grounds thereunder

for relief from conviction. There was no evidence of prejudice. Therefore, the trial court should interpret this as a motion for postconviction relief.

{¶ 8} Motions pursuant to R.C. 2953.21 are a civil postconviction collateral attack. *State v. Hines*, Cuyahoga App. No. 89848, 2008-Ohio-1927. This statute requires that a petitioner be given the opportunity to present evidence supporting a claim that the sentence should be vacated. "In postconviction cases, a trial court acts as a gatekeeper, determining whether a defendant will even receive a hearing." Id. at ¶8. If the trial judge determines that the petitioner did not present sufficient evidence to warrant a hearing, the judge may deny the motion without holding a hearing. If that occurs, R.C. 2953.21(C) requires the trial court to "make and file findings of fact and conclusions of law."[5] See *State v. Thomas*, Cuyahoga App. No. 85375, 2005-Ohio-4830. This is so appellate courts have a sufficient record to review the trial court's decision. *State v. Clemmons* (1989), 58 Ohio App.3d 45, 568 N.E.2d 705. It is also because "the existence of findings and conclusions are essential in order to prosecute an appeal. Without them, a

[5] R.C. 2953.21(C) states: "The court shall consider a petition that is timely filed under division (A)(2) of this section even if a direct appeal of the judgment is pending. Before granting a hearing on a petition filed under division (A) of this section, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript. The court reporter's transcript, if ordered and certified by the court, shall be taxed as court costs. If the court dismisses the petition, it shall make and file findings of fact and conclusions of law with respect to such dismissal."

petitioner knows no more than he lost and hence is effectively precluded from making a reasoned appeal." *State v. Mapson* (1982), 1 Ohio St.3d 217, 218-219, 438 N.E.2d 910.

{¶ 9} Here, the trial judge's entry denying appellant's petition states only "defendant's petition to vacate or set aside judgment of conviction or sentence is denied." Because the judge's order denying the motion did not make the requisite findings, it is not a final appealable order. See *Mapson*, supra; *State v. Perkins* (1982), 5 Ohio App.3d 182, 450 N.E.2d 733; *State v. Thomas*, supra.

{¶ 10} Because this court lacks authority to hear this appeal, the case must be dismissed.

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

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

FRANK D. CELEBREZZE, JR., JUDGE

CHRISTINE T. McMONAGLE, P.J., and
MARY JANE BOYLE, J., CONCUR