

[Cite as *In re W.H.*, 2010-Ohio-2898.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94160

**IN RE: W.H.
MINOR CHILD**

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Court Division
Case No. DL 08127322

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

RELEASED: June 24, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, W.H., appeals from the trial's court judgment denying his petition for post-conviction relief. We dismiss for lack of a final appealable order.

{¶ 2} Two complaints were filed against W.H. in juvenile court; they alleged that he was delinquent for committing aggravated robbery and aggravated burglary, and contained one- and three-year firearm specifications. W.H. denied the allegations and the matter proceeded to trial.

{¶ 3} The court found W.H. guilty of the underlying charges and the one-year firearm specifications. He was committed to a minimum two-year term. W.H. filed a direct appeal to this court,¹ and during the pendency of the appeal, filed a petition for post-conviction relief with the trial court. The trial court denied his petition without a hearing and did not issue findings of fact and conclusions of law. In its judgment denying the petition, the court noted that W.H.'s motion failed to include a certificate of service certifying that the county prosecutor had been served. The judgment further provided that, "[u]pon due consideration of child's counsel as to the merits of the motion, postconviction relief is not well taken."

¹ *In re W.H.*, Cuyahoga App. No. 92786, 2009-Ohio-5835.

{¶ 4} This court has held that a judgment denying a petition for post-conviction relief without findings of fact and conclusions of law is not final and appealable. See *State v. Sawyer*, Cuyahoga App. No. 85911, 2005-Ohio-6486, ¶5; *State v. Loper*, Cuyahoga App. Nos. 81400, 81297, and 81878, 2003-Ohio-3213, ¶106, 107; *State ex rel. Washington v. McDonnell* (Dec. 24, 1997), Cuyahoga App. No. 73173. Here, the trial court noted a procedural defect (i.e., failure to include a certificate of service), but denied the petition after considering the “merits of the motion.” Because the court failed to include findings of fact and conclusions of law with its denial of the petition, the judgment is not final and appealable.

Appeal dismissed.

It is ordered that appellee and appellant equally share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to 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.

CHRISTINE T. McMONAGLE, JUDGE

MARY EILEEN KILBANE, P.J., and

MARY J. BOYLE, J., CONCUR