

[Cite as *State v. Shazor*, 2010-Ohio-3197.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93846

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ARIES LAMONT SHAZOR

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-508911-A and CR-516577-A

BEFORE: Rocco, P.J., Jones, J., and Cooney, J.

RELEASED: July 8, 2010

**JOURNALIZED:
APPELLANT**

Aries Lamont Shazor, Pro Se
Inmate No. 554-508
Grafton Correctional Institution
2500 South Avon Beldon Road
Grafton, Ohio 44044

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Thorin Freeman
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

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).

KENNETH A. ROCCO, P.J.:

{¶ 1} Petitioner-appellant Aries Lamont Shazor appeals from the common pleas court's order denying his motion for relief from the judgment that denied his petition for postconviction relief. We find the trial court did not have jurisdiction to rule on the motion for relief from judgment because an appeal was pending from the order denying appellant's petition for postconviction relief. Accordingly, we also lack jurisdiction and must dismiss this appeal.

{¶ 2} In Case No. CR-508911, appellant pleaded guilty to one count of drug trafficking with forfeiture, juvenile, and schoolyard specifications. He was sentenced on October 20, 2008 to three years of imprisonment followed by three years of postrelease control. In Case No. CR-516577, he pleaded guilty to one count of having a weapon while under disability and was sentenced to another three year term of imprisonment, consecutive to the sentence in the other case, followed by three years of postrelease control. Appellant did not appeal these convictions, but he did file a petition for postconviction relief in both cases, combining the cases for purposes of this motion. On June 15, 2009, the common pleas court entered the following order in both cases:

"COURT ADOPTS STATES [SIC] FINDINGS OF FACT: (FILED 5/29/09)

"DEFENDANT'S PETITION FOR POST CONVICTION [SIC] IS HEREBY DENIED.

"CLERK ORDERED TO SEND A COPY OF THIS ORDER TO:

"DEFENDANT, ARIES SHAZOR (#554508);
"BELMONT CORRECTIONAL INSTITUTION
"P.O. BOX 540
"ST. CLAIRSVILLE, OHIO 43950"

{¶ 3} On June 19, 2009, appellant filed a motion for relief from this judgment in each of the cases. He also filed a notice of appeal on July 13, 2009, Appeal No. 93609. Appellant moved this court to remand the case for the trial court to rule on the motion for relief from judgment, but this court denied the motion to remand on August 11, 2009. On the same date, however, the trial court entered an order denying appellant's motion for relief from judgment. This appeal challenges that ruling.

{¶ 4} There was an appeal pending from the order denying appellant's petition for postconviction relief at the time the court ruled on his motion for relief from judgment. "[A]n appeal divests trial courts of jurisdiction to consider Civ.R. 60(B) motions for relief from judgment. * * * Jurisdiction may be conferred on the trial court only through an order by the reviewing court remanding the matter for consideration of the Civ.R. 60(B) motion." *Howard v. Catholic Social Serv. of Cuyahoga Cty., Inc.*, 70 Ohio St.3d 141, 147,

1994-Ohio-219, 637 N.E.2d 890, citing *State ex rel. E. Mfg. Corp. v. Ohio Civ. Rights Comm.* (1992), 63 Ohio St.3d 179, 181, 586 N.E.2d 105, 107. This court expressly denied appellant's motion to remand. Consequently, the trial court lacked jurisdiction to rule on appellant's motion for relief from judgment. See *Howard; Gordon v. Gordon*, Muskingum App. Nos. CT2007-0072 and CT2007-0081, 2009-Ohio-177; *State v. Smith*, Wayne App. Nos. 07CA009220 and 07CA009252, 2008-Ohio-3589, ¶10; *Pisani v. Pisani* (July 18, 1996), Cuyahoga App. No. 69795.¹

{¶ 5} An order entered without jurisdiction is void. A void judgment is necessarily not a final appealable order. Therefore, we lack jurisdiction over this appeal and must dismiss it. *Beck v. Jones*, Cuyahoga App. Nos. 90120 and 91056, 2008-Ohio-5343, ¶14.

¹The Ohio Supreme Court in *Howard* and this court in *Pisani* affirmed trial court orders that denied a Civ.R. 60(B) motion while an appeal was pending, on the express basis that the court lacked jurisdiction. The trial court here did not expressly state its reason for denying the motion. We cannot assume that the motion was denied on jurisdictional grounds absent an express ruling to that effect.

We find some confusion as to whether the trial court should reserve ruling on a Civ.R. 60(B) motion until after the appeal is decided or whether it should deny the motion during the pendency of the appeal on the express ground that it lacks jurisdiction. The seminal Ohio Supreme Court case in the area, *Howard*, affirms an order that denied a Civ.R. 60(B) motion because an appeal was pending; this holding implies that the party may refile the Civ.R. 60(B) motion after the appeal is concluded. Consistent with this implication, we have held that the pendency of an appeal tolls the time for filing a motion for relief from judgment. *Wells v. Spirit Fabricating Ltd.* (1996), 113 Ohio App.3d 282, 680 N.E.2d 1046. On the other hand, *Majnaric v. Majnaric* (1975), 46 Ohio App.2d 157, 347 N.E.2d 552 (upon which the Supreme Court relied in *Howard*) holds that when the trial court reserves ruling on a Civ.R. 60(B) motion during the pendency of an appeal, it has the jurisdiction to rule on it after the appeal is concluded. Thus, it appears that either procedure is appropriate.

Dismissed.

It is ordered that appellee recover from appellant 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.

KENNETH A. ROCCO, PRESIDING JUDGE

LARRY A. JONES, J., and
COLLEEN CONWAY COONEY, J., CONCUR
