

[Cite as *State v. Williams*, 2011-Ohio-120.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95359

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SHELDON WILLIAMS

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-515483

BEFORE: Cooney, J., Gallagher, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: January 13, 2011

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COLLEEN CONWAY COONEY, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Defendant-appellant, Sheldon Williams (“Williams”), appeals the trial court’s decision denying him judicial release. For the following reasons, we dismiss for lack of a final, appealable order.

{¶ 2} In September 2008, Williams was charged with one count of felonious assault, with a notice of prior conviction specification and a repeat

violent offender specification. Williams waived his right to a jury trial, and the case proceeded to a bench trial at which the court found Williams guilty. He was sentenced to two years in prison.

{¶ 3} In March 2009, Williams appealed his conviction, claiming that the evidence was insufficient and his conviction was against the manifest weight of the evidence. This court affirmed in *State v. Williams*, Cuyahoga App. No. 92969, 2010-Ohio-1752. Williams filed a motion for judicial release in September 2009, which the State opposed. The trial court held a judicial release hearing and denied Williams’s motion, finding that due to the prior conviction specification, which made the offense of felonious assault nonprobationable, he was ineligible for judicial release. It is from this judgment that Williams now appeals, raising one assignment of error.

{¶ 4} In his sole assignment of error, Williams argues the trial court erred in determining he was ineligible for judicial release. Williams argues that the prior conviction specification is not applicable to his underlying offense of felonious assault based on the plain language of the statute.

{¶ 5} As an initial matter, we must address whether the judgment from which Williams appeals is a final, appealable order.

{¶ 6} “Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district * * *.” Section

3(B)(2), Article IV, Ohio Constitution. A final order is an “order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it * * * affects a substantial right made in a special proceeding * * *.” R.C. 2505.02(B)(2).

{¶ 7} R.C. 2929.20, which governs judicial release, gives a trial court substantial discretion in deciding whether to grant a motion for judicial release. The statute, however, makes no provision for appellate review.

{¶ 8} In *State v. Coffman*, 91 Ohio St.3d 125, 2001-Ohio-296, 742 N.E.2d 644, syllabus, the Ohio Supreme Court held that a denial of a motion for shock probation under former R.C. 2947.061 is not a final, appealable order. As the *Coffman* court noted, R.C. 2947.061, which governs shock probation, was repealed effective July 1, 1996, and therefore inmates who are incarcerated after that date must now seek judicial release under R.C. 2929.20. *Id.* at 126. See, also, *State v. Woods* (2001), 141 Ohio App.3d 549, 752 N.E.2d 309, (the Ninth District Court of Appeals, relying on *Coffman*, found that the denial of a motion for judicial release is not a final, appealable order). The *Coffman* court further held that a “the determination of a shock probation motion is a ‘special proceeding’ inasmuch as shock probation was a purely statutory creation and was unavailable at common law.” *Id.* at 127.

{¶ 9} “This observation is equally true with respect to the determination of a judicial release motion. Judicial release is a purely statutory creation.” *State v. Burgess*, Greene App. No. 01-CA-87, 2002-Ohio-2594. Thus, the

determination of a judicial release motion constitutes a “special proceeding.” See *State v. Cunningham*, Cuyahoga App. No. 85342, 2005-Ohio-3840, ¶9, affirmed, 113 Ohio St.3d 108, 2007-Ohio-1245, 863 N.E.2d 120 (affirming this court’s dismissal of the state’s appeal challenging the granting of judicial release for a fifth degree felony).

{¶ 10} Having determined that granting judicial release is a special proceeding, we now analyze whether it affects a substantial right. In *Coffman*, the court reasoned that the denial of a shock probation motion does not affect a “substantial right,” which is defined as “a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.” *Id.* at 127, quoting R.C. 2505.02(A)(1). In reaching its conclusion, the court stressed that the shock probation statute gave judges considerable discretion in ruling on a motion filed thereunder. *Id.* Given that the shock probation statute “conferred substantial discretion while simultaneously making no provision for appellate review,” the court concluded that an order denying shock probation was not a final, appealable order. *Id.* at 128.

{¶ 11} We conclude that the trial court’s denial of an inmate’s motion for judicial release is not a final, appealable order. Under R.C. 2929.20, the denial of judicial release is within the discretion of the trial judge, and the statute makes

no provision for appellate review. Thus, we are without jurisdiction to hear this appeal.

{¶ 12} Accordingly, this appeal is 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.

COLLEEN CONWAY COONEY, JUDGE

PATRICIA A. BLACKMON, J., CONCURS;
SEAN C. GALLAGHER, P.J., CONCURS WITH SEPARATE
CONCURRING OPINION ATTACHED

SEAN C. GALLAGHER, P.J., CONCURRING:

{¶ 13} I concur fully with the majority analysis and holding. Appellant claims the trial court never reached the merits on the issue of judicial release because the court was unable to resolve the eligibility question. I see this as a distinction without a difference. Whether the motion is denied because the court cannot determine eligibility or the court declines to grant the motion on the merits, it is still a denial that results in a conclusion that is not subject to appeal.