

[Cite as *State v. Williams*, 2015-Ohio-767.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101385

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

VS.

**RICHARD WILLIAMS**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
DISMISSED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-10-534090-A

**BEFORE:** Stewart, J., Kilbane, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** March 5, 2015

**FOR APPELLANT**

Richard Williams, pro se  
Inmate No. 592-040  
Madison Correctional Institution  
P.O. Box 740  
London, OH 43140

**ATTORNEYS FOR APPELLEE**

Timothy J. McGinty  
Cuyahoga County Prosecutor

Mary McGrath  
Assistant County Prosecutor  
Justice Center, 8th Floor  
1200 Ontario Street  
Cleveland, OH 44113

MELODY J. STEWART, J.:

{¶1} In 2010, defendant-appellant, Richard Williams, pleaded guilty to counts of rape and gross sexual imposition. He filed a direct appeal arguing that he did not enter his guilty plea voluntarily, but we rejected that argument and affirmed his conviction. *See State v. Williams*, 8th Dist. Cuyahoga No. 95853, 2011-Ohio-2551. Williams then asked us to reopen his appeal on grounds that the court failed to issue a final, appealable order. We denied the application to reopen the appeal, finding that the sentencing entry complied with all requirements. *Id.*, *reopening disallowed* (Jan. 30, 2012), Motion No. 447136, ¶ 7.

{¶2} In April 2014, Williams filed a motion “for a final appealable order,” arguing that the court failed to comply with Crim.R. 32(C) in its sentencing entry. The state opposed the motion on grounds that it was res judicata given this court’s reasoning in refusing to reopen the direct appeal. The court denied the motion and Williams’s appeals.

{¶3} We lack jurisdiction to hear this appeal because an order denying a motion for a final, appealable order is not itself a final order. Our appellate jurisdiction is limited to reviewing orders that are both final and appealable. An order is “final” only if it meets the criteria set forth in R.C. 2505.02; as applicable here, “[a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment.” *See* R.C. 2505.02(B)(1).

{¶4} Logically, an order denying a “motion for a final appealable order” does not determine the action. If, as Williams maintains, there was no final order in the case (hence his request that the court issue one), the court’s refusal to grant a final order simply left the case as it was when Williams filed his motion. In other words, the order denying the motion for a final, appealable order did not determine the action, just as an order denying a motion to dismiss a case

generally does not determine the action. *See, e.g., Polikoff v. Adam*, 67 Ohio St.3d 100, 103, 616 N.E.2d 213 (1993).

{¶5} The alternative is to find that a final order did exist and that Williams's motion was an attempt to have the court issue an order that could be the basis for further appeal. This alternative does not benefit Williams because the motion would be akin to a motion for reconsideration after a final judgment. *See Pitts v. Ohio Dept. of Transp.*, 67 Ohio St.2d 378, 423 N.E.2d 1105 (1981); *Cleveland Hts. v. Richardson*, 9 Ohio App.3d 152, 153, 458 N.E.2d 901 (8th Dist.1983). If a final order did exist before Williams filed his motion for a final, appealable order, the motion would be a nullity and the court's order denying it would likewise be a nullity. *See State v. Dix*, 8th Dist. Cuyahoga No. 101007, 2014-Ohio-3330, ¶ 3.

{¶6} Accordingly, the 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.

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MELODY J. STEWART, JUDGE

MARY EILEEN KILBANE, P.J., and  
MARY J. BOYLE, J., CONCUR