

STATE OF OHIO                    )  
  )ss:  
COUNTY OF LORAIN            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.       14CA010564

Appellee

v.

BRADY M. PHILLIPS

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE No.     10CR079807

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 8, 2015

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CARR, Judge.

{¶1} Appellant, Brady Phillips, attempts to appeal the judgment of the Lorain County Court of Common Pleas. This Court dismisses the appeal for lack of a final, appealable order.

I.

{¶2} On February 11, 2010, Phillips was charged with numerous criminal offenses, including multiple counts of murder. On May 20, 2010, a supplemental indictment was filed charging Phillips with several additional offenses. Over the course of the next three years, the parties filed copious motions as they dealt with a variety of procedural issues.

{¶3} On March 25, 2013, Phillips filed a motion to order specific performance of two separate plea agreements. The first of the alleged plea agreements dealt with cooperation in the prosecution of an alleged co-conspirator in the instant case, and the second dealt with providing information regarding an unrelated murder case. Phillips alleged that if he complied with the first agreement, the State agreed that he could plead to amended charges and receive a fourteen-

year prison sentence. Phillips further alleged that if he complied with the second agreement, the State agreed that he could plead to amended charges and receive a six-year prison sentence. The State filed a brief in opposition to the motion for specific performance, and Phillips replied thereto. The State filed an additional responsive brief which was considered by the trial court. The parties subsequently appeared before the trial court for an evidentiary hearing. On March 3, 2014, the trial court issued a journal entry refusing to order specific performance of the plea agreements on the basis that Phillips had failed to perform his obligations in accordance with the agreements.

{¶4} On April 2, 2014, Phillips filed a notice of appeal from the March 3, 2014 order. On appeal, Phillips raises two assignments of error.

## II.

### **ASSIGNMENT OF ERROR I**

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING THAT THE DEFENDANT, BRADY M. PHILLIPS, WAS NOT ENTITLED TO SPECIFIC PERFORMANCE WITH REGARD TO THE TWO (2) COOPERATION AGREEMENTS ENTERED INTO WITH THE STATE OF OHIO, IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS, SINCE THE EVIDENCE BEFORE THE TRIAL COURT ESTABLISHED THAT THE DEFENDANT PERFORMED ALL OF HIS OBLIGATIONS UNDER THE TERMS OF THE COOPERATION AGREEMENTS AND WAS, THEREFORE, ENTITLED TO SPECIFIC PERFORMANCE. (sic)

### **ASSIGNMENT OF ERROR II**

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING THAT THE DEFENDANT, BRADY M. PHILLIPS, WAS NOT ENTITLED TO SPECIFIC PERFORMANCE WITH REGARD TO THE TWO (2) COOPERATION AGREEMENTS ENTERED INTO WITH THE STATE OF OHIO SINCE THE STATE WAS JUDICIALLY AND EQUITABLY ESTOPPED FROM ASSERTING THAT THE DEFENDANT FAILED TO PERFORM ALL OF HIS OBLIGATIONS UNDER THE TERMS OF THE COOPERATION AGREEMENTS. (sic)

{¶5} In his two assignments of error, Phillips argues that the trial court erred in refusing to order specific performance of the plea agreements.

{¶6} As a preliminary matter, we note that this Court is obligated to raise sua sponte questions related to our jurisdiction. *Whitaker-Merrell Co. v. Geupel Constr. Co., Inc.*, 29 Ohio St.2d 184, 186 (1972). This Court has jurisdiction to hear appeals only from final judgments. Article IV, Section 3(B)(2), Ohio Constitution; R.C. 2501.02. In the absence of a final, appealable order, this Court must dismiss the appeal for lack of subject matter jurisdiction. *Lava Landscaping, Inc. v. Rayco Mfg., Inc.*, 9th Dist. Medina No. 2930-M, 2000 WL 109108 (Jan. 26, 2000). “An order is a final appealable order if it affects a substantial right and in effect determines the action and prevents a judgment.” *Yonkings v. Wilkinson*, 86 Ohio St.3d 225, 229 (1999).

{¶7} R.C. 2505.02(B)(4) defines “final order” as follows:

An order that grants or denies a provisional remedy and to which both of the following apply:

- (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.
- (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶8} Initially, we note that the March 3, 2014 order from which Phillips appeals does not resolve all of the issues raised in Phillips’ motion for specific performance. While the trial court determined that Phillips had not met his obligations under either agreement, it noted that Phillips could still satisfy his obligations under the second of the two agreements if he made himself available for a polygraph examination by March 20, 2014. The trial court specified that Phillips could meet his obligations in exchange for a fourteen-year prison sentence. Phillips then

filed a notice of availability to submit to a polygraph examination, the parties subsequently appeared before the court for a hearing, and the trial court issued a journal entry amending its March 3, 2014 order to clarify how Phillips could comply with the terms of the second plea agreement. Thus, while Phillips attempts to appeal the trial court's March 3, 2014 order, the issue of whether he had complied with the terms of the second plea agreement remained unresolved at the time Phillips filed his notice of appeal on April 2, 2014.

{¶9} Even assuming that the trial court issued a definitive ruling on Phillip's motion for specific performance, that order did not constitute a final, appealable order. Phillips contends that the order is final under R.C. 2505.02(B)(4) because an appeal after final judgment would not provide effective relief. Upon review, we are not persuaded that effective relief could not be sought after final judgment. Just as in any case where a defendant complied with the terms of the plea agreement and the State refused to perform its reciprocal obligation, a defendant can pursue a remedy by either moving to withdraw his plea or challenging the validity of his plea on direct appeal after the trial court issued a judgment entry disposing of all of the charges in the indictment. Because the trial court's journal entry refusing to order specific performance of the plea agreements is not a final, appealable order, this Court is without jurisdiction to consider the merits of the appeal.

Appeal dismissed.

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Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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DONNA J. CARR  
FOR THE COURT

HENSAL, P. J.  
WHITMORE, J.  
CONCUR.

APPEARANCES:

BRIAN J. DARLING, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and NATASHA RUIZ GUERRIERI, Assistant Prosecuting Attorney, for Appellee.