[Cite as *State v. Alexander*, 2025-Ohio-2587.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

STATE OF OHIO,	:	
	:	Case No. 24CA4065
Plaintiff-Appellee,	:	
	:	
v.	:	DECISION AND JUDGMENT
	:	ENTRY
NATHANIEL ALEXANDER,	:	
	:	
Defendant-Appellant.	:	**RELEASED: 07/16/2025**

APPEARANCES:

Nathaniel Alexander, Ohio, appellant, pro se.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay Willis, Assistant Scioto County Prosecuting Attorney, Portsmouth, Ohio, for appellee.

Wilkin, J.

{¶1} This is an appeal from a Scioto County Court of Common Pleas judgment entry in which the trial court denied appellant, Nathaniel Alexander's, motion for resentencing. As we explain below, we dismiss the appeal for lack of a final appealable order.

{¶2} In July 2003, the State filed a complaint in the Portsmouth Municipal Court charging Alexander with murder. *See State v. Alexander*, 2009-Ohio-1401, ¶ 6 (4th Dist.). "Alexander waived his right to a preliminary hearing, and the case was bound over to the Scioto County grand jury and assigned Scioto County Common Pleas Court No. 03-CR-653." *Id*. In November 2003, the grand jury returned "no indictment has been found[.]" *Id.* The trial court discharged the grand jury. *Id*.

{¶3} In August 2005, a new grand jury indicted Alexander for aggravated murder premised upon the same set of facts as presented by the State in its previous attempt to indict Alexander in 2003. *Id.* at ¶ 7. The indictment for aggravated murder with the firearm specification had a new case number: 05-CR-1247. *Id*. Alexander pleaded not guilty and the matter proceeded to a jury trial. *Id.* at ¶ 12. The jury found Alexander guilty of the lesser offense of murder with a firearm specification. *Id*. Alexander appealed his conviction and argued three assignments of error, none of which addressed his sentence. *Id*. at ¶ 14. We overruled Alexander's assignments of error and affirmed his murder conviction with the firearm specification. *Id*. at ¶ 66.

{¶4} In May 2023, Alexander filed a motion for resentencing and included both of his criminal case numbers: 03-CR-653 and 05-CR-1247 in the caption. In his motion, Alexander argued that the trial court's 2018 nunc pro tunc journal entry violated his constitutional right to be present at sentencing. The State opposed the motion arguing that Alexander's motion is untimely, his presence was not required in 2018 since the trial court's journal entry simply corrected a clerical error, and third, his motion is barred by the doctrine of res judicata.

{¶5} The trial court did not hold a hearing, and in January 2024, denied Alexander's motion for resentencing. In the entry, the trial court stated: "On June 25, 2018 this Court entered a Nunc Pro Tunc Entry which corrected a clerical error to clarify that the Defendant was convicted anbd (sic.) sentenced on a charge of Murder, an unclassified felony instead of a first degree felony." The trial court then found that Alexander's motion for resentencing was "exceedingly

untimely," the correction in the nunc pro tunc entry was clerical and thus, Alexander's presence was not required, and finally Alexander's motion was barred pursuant to the doctrine of res judicate.

{¶6} The trial court's journal entry denying Alexander's motion for resentencing solely had the case number 03-CR-653 in the caption. Alexander appealed the trial court's denial of his motion and in his notice of appeal, attached the trial court's entry which solely had the 03-CR-653 case number.

{¶7} We are unable to reach the merits of Alexander's sole assignment of error because we lack jurisdiction to review the trial court's decision. Although our jurisdiction was not raised by either party, we must sua sponte consider our jurisdiction to review an entry by the trial court. *See State v. Kitchen*, 2018-Ohio-5244, ¶ 21 (4th Dist.).

{¶8} "In criminal cases, pursuant to R.C. 2953.02, a court of appeals only possesses jurisdiction to hear an appeal if it is from a 'judgment or final order.' " *State v. Jones*, 2024-Ohio-6113, ¶ 12 (11th Dist.). And as we recently stated "a 'judgment' generally means " '[a] court's final determination of the rights and obligations of the parties in a case.' " " *State v. Wagner*, 2025-Ohio-542, ¶ 8 (4th Dist.), quoting *State v. Jones*, 2024-Ohio-2719, ¶ 14, quoting *Black's Law Dictionary* (11th Ed. 2019). Pursuant to R.C. 2505.02,

> (B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
> (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;
> (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

> (3) An order that vacates or sets aside a judgment or grants a new trial;
> (4) 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.
> (5) An order that determines that an action may or may not be maintained as a class action;
> (6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 (renumbered as 5164.07 by H.B. 59 of the 130th general assembly[1]), and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code;
> (7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code;
> (8) An order restraining or restricting enforcement, whether on a temporary, preliminary, or permanent basis, in whole or in part, facially or as applied, of any state statute or regulation, including, but not limited to, orders in the form of injunctions, declaratory judgments, or writs ;
> (9) An order that denies a motion for expedited relief pursuant to section 2747.04 of the Revised Code.

{¶9} Accordingly, "[i]If a court's order is not final, we must dismiss the appeal." *Wagner* at ¶ 10, citing *Eddie v. Saunders*, 2008-Ohio-4755, ¶ 11 (4th Dist.). And "in a criminal case there must be a sentence which constitutes a judgment or a final order which amounts 'to a disposition of the cause' before there is a basis for appeal." *State v. Chamberlain*, 177 Ohio St. 104, 106-107 (1964).

{¶10} In 2003, under case number 03-CR-653, the grand jury did not indict Alexander for murder. And because the grand jury did not indict him, in addressing Alexander's argument in his direct appeal that his speedy trial right was violated due to the two-year delay between his 2003 municipal case and the 2005 indictment, we held:

> Here, the State failed to obtain the required indictment against Alexander when the grand jury issued its "no bill". And, the trial court lost jurisdiction of the charge against Alexander, i.e., the murder charge bound over to the grand jury, after it discharged the grand jury. See, e.g., *State v. Woods* (June 16, 1988), Franklin App. No. 87AP736, 1988 WL 64003, noting that there were no charges pending against the defendant (who had been charged with murder, bound over to the grand jury, and released on bond) between the time the grand jury returned a "no bill" and a later indictment.
>
> While Alexander correctly contends that neither the State nor the trial court filed a dismissal entry for case number 03-CR-653, *we conclude the case terminated automatically by operation of law when the common pleas court lost jurisdiction by virtue of the discharge after the "no bill." In other words, while "Case No. 03-CR-653" remained open in the court's docket, it was a legal nullity at that point. And accordingly, there was no charge "pending" against Alexander for purposes of his speedy trial rights.* (Emphasis added).
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> . . .
>
> Thus, we agree with the trial court's conclusion that there was no charge "pending" against Alexander from the time of the grand jury's "no bill" on November 19, 2003 through August 26, 2005, i.e., the date he was subsequently indicted, and that the State is not charged with this time under R.C. 2945.71.

Alexander, 2009-Ohio-1401, ¶ 25-26, 29 (4th Dist.).

{¶11} Therefore, pursuant to our previous holding, Alexander's 03-CR-653 case terminated after the grand jury's "no bill." And this is supported by the fact that in 2007, according to the docket statement, the case file was destroyed. Because the case was terminated without Alexander being charged with any

offense, let alone be sentenced to any incarceration, we find this to be equivalent to a dismissed case. And

> "[w]hen the state voluntarily dismisses a case, it is terminated. Terminated means done, finished, over, kaput." *State ex rel. Flynt v. Dinkelacker*, 156 Ohio App.3d 595, 2004-Ohio-1695, 807 N.E.2d 967, ¶ 23 (1st Dist.). Because the case has been dismissed and cannot be reinstated, the trial court patently and unambiguously lacked jurisdiction to consider West's motion. *Id.* at ¶ 28.

State v. West, 2018-Ohio-4981, ¶ 6.

{¶12} Similarly here, the trial court lacked jurisdiction to issue an entry denying Alexander's motion for resentencing in the terminated 03-CR-653 case. "An order entered without jurisdiction is null and void." *Gordon v. Gordon*, 2009-Ohio-177, ¶ 30 (5th Dist.), citing *Reese v. Proppe*, 3 Ohio App.3d 103, 104 (8th Dist. 1981). Moreover, "[a] void judgment is not a final and appealable order." *State v. Banks*, 2024-Ohio-5873, ¶ 4 (11th Dist.), citing *Gordon* at ¶ 30.

{¶13} The entry that Alexander appeals and presents to us was issued without jurisdiction, thus it was void. Accordingly, the entry is not a final appealable order. Wherefore, the appeal is hereby dismissed for lack of a final appealable order.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the appeal be dismissed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.