

Released 1/23/23

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

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Case No. 24CA16
	:	
v.	:	
	:	<u>DECISION AND</u>
Wayne M. Walker,	:	<u>JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	

APPEARANCES:

Christopher Bazeley, Cincinnati, Ohio, for Appellant.

Judy C. Wolford, Pickaway County Prosecutor, Circleville, Ohio, for Appellee.

Smith, P.J.

{¶1} Appellant, Wayne M. Walker, appeals the judgment of the Pickaway County Court of Common Pleas denying his motion for judicial release. On appeal, he contends that the trial court erred as a matter of law when it applied the wrong version of R.C. 2929.20 and denied his motion for judicial release.

However, because a trial court’s denial of a motion for judicial release is not a final appealable order we must dismiss this appeal for lack of jurisdiction.

PROCEDURAL HISTORY

{¶2} Appellant was convicted of one count of endangering children, a second-degree felony, and one count of voluntary manslaughter, a first-degree felony, on March 27, 2013 in the Pickaway County Court of Common Pleas. He was sentenced to an 8-year prison term for child endangering as well as an 11-year prison term for voluntary manslaughter, to be served consecutively. Appellant filed a motion for judicial release on May 3, 2024. The trial court denied Appellant’s motion, with prejudice, on May 10, 2024. Appellant thereafter filed a motion for leave to file a delayed appeal on July 16, 2024, which was granted by this Court on August 8, 2024. The matter is now before us for consideration of a single assignment of error.

ASSIGNMENT OF ERROR

- I. THE TRIAL COURT ERRED AS A MATTER [SIC] OF LAW WHEN IT APPLIED THE WRONG VERSION OF R.C. 2929.20 AND DENIED WALKER’S MOTION FOR JUDICIAL RELEASE.

LEGAL ANALYSIS

{¶3} Before we review the merits of this appeal we must initially determine whether we have jurisdiction to do so. “Appellate courts ‘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 * * *.’” *State v. Stevens*, 2022-Ohio-2518, ¶ 8 (4th Dist.), quoting Ohio Constitution, Article IV, Section 3(B)(2). “ ‘If a court’s order is not final and

appealable we have no jurisdiction to review the matter and must dismiss the appeal.’ ” *Id.* at ¶ 8, quoting *Clifton v. Johnson*, 2015-Ohio-4246, ¶ 8 (4th Dist.).

As this Court noted in *Stevens*, “ ‘[i]n the event that the parties do not raise the jurisdictional issue, we must raise it sua sponte.’ ” *Id.* Here, however, the State argues that the order being appealed from, the trial court's judgment denying Appellant's motion for judicial release, does not constitute a final appealable order and that this Court lacks jurisdiction to proceed. For the following reasons we agree.

{¶4} “This court and other Ohio appellate courts have held that the denial of a motion for judicial release is not a final appealable order.” *State v. Garland*, 2021-Ohio-1805, ¶ 7 (4th Dist.), citing *Bradley v. Hooks*, 2017-Ohio-4105, ¶ 3 (4th Dist.). *See also State v. Cruz*, 2021-Ohio-947, ¶ 6 (8th Dist.) (citing cases from the 1st, 2nd, 9th, 10th and 11th appellate districts); *State v. Watkins*, 2020-Ohio-5203, ¶ 25 (10th Dist.) (“A denial of a motion for judicial release is not a final appealable order”); *but see State v. Francis*, 2011-Ohio-4497, ¶ 14 (4th Dist.) (appellate review available if state breached an agreement concerning judicial release citing *State ex rel. Rowe v. McCown*, 2006-Ohio-548, ¶ 5); *contra State v. Williams*, 2008-Ohio-1906, ¶ 10 (10th Dist.) (“appellant may not avoid this jurisdictional barrier by arguing that the trial court ‘broke its agreement’ to grant a motion for judicial release * * *”).

{¶5} This Court has recently observed as follows:

“ ‘In *State v. Coffman*, 91 Ohio St.3d 125, 742 N.E.2d 644 (2001), syllabus, the Supreme Court of Ohio held that “[a] trial court's order denying shock probation pursuant to former R.C. 2947.061(B) is not a final appealable order.” The court premised its holding on the fact that although the decision arises in a special proceeding, no substantial right of the defendant is impacted even if there is a constitutional or statutory violation. *Id.* at 127-129. Judicial release replaced shock probation effective July 1996, and consistent with *Coffman*, courts have generally held that a trial court's order denying judicial release pursuant to R.C. 2929.20 is not a final appealable order. *See generally State v. Hague*, 11th Dist. Ashtabula No.2015-A-0030, 2015-Ohio-3645, ¶ 3, and cases cited therein.’ ”

State v. Midlam, 2023-Ohio-62, *2, quoting *State v. Garland* at ¶ 7, in turn quoting *State v. Dowler*, 2015-Ohio-5027, ¶ 15 (4th Dist.).

Appellant herein, like both *Midlam* and *Garland*, fails to allege that the State breached an agreement concerning judicial release and thus, that exception does not apply. *See Midlam* at *2, *Garland* at ¶ 7, and *Dowler* at ¶ 17.

{¶6} In his brief, although Appellant concedes that a trial court's decision denying judicial release is not a final appeal order, he contends that this denial of judicial release is reviewable based upon his argument that the trial court failed to apply the correct version of the judicial release statute in denying his motion. However, as set forth above, the *Coffman* case expressly stated that the denial of shock probation or judicial release does not affect a substantial right even if there is an alleged constitutional or statutory violation. *See also State v. Schlosser*,

2016-Ohio-731, ¶ 3 (2d Dist.), quoting *State v. McBroom*, 2015-Ohio-4719, ¶ 4 (2d Dist.) (observing that as a result of *Coffman* “defendants lack the ability to challenge any facet of a trial court’s decision on shock probation regardless of whether it contains a legal error, factual error, or an abuse of discretion”). Thus, we find no merit in Appellant’s argument that this particular denial of judicial release constitutes an exception to the application of *Coffman* which precludes review of a trial court’s denial of a motion for judicial release.

{¶7} Accordingly, in light of the foregoing reasoning, we lack jurisdiction to address the merits of this appeal and we must dismiss it.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the APPEAL BE DISMISSED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

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

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Abele, J. and Hess, J., concur in Judgment and Opinion.

For the Court,

Jason P. Smith
Presiding 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.