

[Cite as *State v. Richard*, 2002-Ohio-5355.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 80946

STATE OF OHIO	:	ACCELERATED DOCKET
	:	
Plaintiff-appellee	:	
	:	JOURNAL ENTRY
vs.	:	and
	:	OPINION
DONALD RICHARD, JR.	:	
	:	
Defendant-appellant	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	OCTOBER 3, 2002
CHARACTER OF PROCEEDING	:	Civil appeal from Cuyahoga County Common Pleas Court Case No. CR-358885
JUDGMENT	:	AFFIRMED.
DATE OF JOURNALIZATION	:	
APPEARANCES:		
For plaintiff-appellee:		WILLIAM D. MASON Cuyahoga County Prosecutor RENEE L. SNOW, Assistant Justice Center, Courts Tower 1200 Ontario Street Cleveland, Ohio 44113
For defendant-appellant:		DONALD RICHARD, JR. Pro Se Southern Ohio Correctional Facility P.O. Box 45699 Lucasville, OH 45699
KENNETH A. ROCCO, P.J.:		

{¶1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the record from the lower court, the briefs and arguments of counsel. The purpose of an accelerated docket is to allow an appellate court to render a brief and conclusory decision. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶2} Appellant-petitioner Donald Richard, Jr. appeals from the common pleas court order denying his motion for relief from judgment, arguing that (1) the motion was timely and demonstrated that he was entitled to relief on the ground of excusable neglect and had a meritorious claim upon which relief could be granted, and (2) the court should have held an evidentiary hearing on his motion. We find no error in the court's judgment and affirm.

{¶3} Richard pleaded guilty to attempted murder with firearm and repeat violent offender specifications. His conviction and sentence were affirmed on appeal. Richard then moved for leave to withdraw his guilty plea. The common pleas court overruled the motion, and this court also affirmed that decision.

{¶4} Next, Richard filed a petition for post-conviction relief, which the common pleas court also denied. This court affirmed that judgment on appeal as well.

{¶5} While the appeal was pending from the denial of Richard's petition for post-conviction relief, Richard filed a motion with the common pleas court for relief from judgment. The common pleas court denied the motion while the appeal remained pending.

{¶6} The common pleas court lacked jurisdiction to consider Richard's motion for relief from judgment. "[A]n appeal divests trial courts of jurisdiction to consider Civ.R. 60(B) motions for relief from judgment. *** Jurisdiction may be conferred on the trial court only through an order by the reviewing court remanding the matter for consideration of the Civ.R. 60(B) motion." *Howard v. Catholic Social Services of Cuyahoga County* (1994), 70 Ohio St.3d 141, 147. Therefore, the common pleas court properly denied petitioner's motion.

Affirmed.

It is ordered that appellee recover of appellant its 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 common pleas court to carry this judgment into execution.

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

PRESIDING JUDGE
KENNETH A. ROCCO

ANN DYKE, J. and

DIANE KARPINSKI, J. CONCUR

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).