

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2010-T-0008
CHARLES L. LEMONS, III,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2007 CR 806.

Judgment: Appeal dismissed.

Dennis Watkins, Trumbull County Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Charles L. Lemons, III, pro se, PID: A563-098, Lebanon Correctional Institution, P.O. Box 56, Lebanon, OH 45036 (Defendant-Appellant).

MARY JANE TRAPP, P.J.

{¶1} This matter is before us upon a “Motion to Dismiss Appellant’s Notice of Appeal” filed by the state of Ohio. The state filed the motion in response to a document filed pro se by Charles L. Lemons, III, which was labeled simultaneously as “Post Conviction Relief (2953.21)” and “Notice of Appeal.”

{¶2} Mr. Lemons was found guilty of felonious assault, kidnapping, rape, and attempted rape on February 9, 2009, and was sentenced for his convictions of these offenses on March 11, 2009. On April 10, 2009, he filed a notice of appeal, currently pending before this court. The trial court’s docket reflects that he subsequently filed two

petitions for postconviction relief, one on December 2, 2009, and one on January 25, 2010. The court denied one of his petitions on February 8, 2010.

{¶3} Mr. Lemons filed the subject document on December 7, 2009. Attached to the document is a judgment entry of the trial court journalized on May 8, 2009, which denied his postconviction application for DNA testing. We construe the document as a notice of appeal from the attached judgment entry. In that judgment entry, the trial court stated, without any explanations: “The Court considered Defendant’s Application for DNA Testing and State’s opposition to the application. The application is not well taken.”

{¶4} R.C. 2953.71 to R.C. 2953.81 permits eligible inmates to apply for DNA testing. Furthermore, R.C. 2953.73(D) *requires* the trial court to set forth its reasons if it denies the application. Several appellate districts have held that when the trial court’s judgment entry fails to set forth any reasons for denying the inmate’s application for DNA testing, the judgment is not a final appealable order and the appeal should be dismissed for lack of final appealable order. See *State v. Newell*, 8th Dist. No. 85280, 2005-Ohio-2853, citing *State v. Mapson* (1982), 1 Ohio St.3d 217 (a judgment that does not include statutorily mandated findings does not constitute a final appealable order); *State v. Hickman*, 9th Dist. No. 22279, 2005-Ohio-472 (there was no final appealable order when the trial court’s judgment was insufficient to apprise appellant of the reasons for dismissing his postconviction application for DNA testing or to enable the appellate court to properly determine appellant’s appeal on the merits); *State v. Thomas*, 1st Dist. No. C-050245, 2005-Ohio-6823, ¶14; *State v. Hayden*, 2d Dist. No. 20747, 2005-Ohio-4025.

{¶5} In the instant case, the trial court issued a one-line judgment denying Mr. Lemons’ application for DNA testing, without setting forth any reasons for its denial.

Because the judgment does not provide us a basis for review, we must dismiss the appeal for lack of final appealable order.

{¶6} The state asks us to dismiss Mr. Lemons' appeal on the ground that the appeal is untimely. The record reflects the trial court denied Mr. Lemons' application for DNA testing on May 8, 2009, yet he did not file the instant "notice of appeal" until December 7, 2009. App.R. 4(A) states: "[a] party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure."

{¶7} Whether the instant appeal is untimely or not depends in part on whether an appeal from a denial of a R.C. 2953.73 postconviction application for DNA testing should be considered criminal or civil in nature. If it is considered civil, then there would be a question of whether service of the judgment had been made on Mr. Lemons within the three-day period pursuant to Civ.R. 58(B) and whether the service had been properly entered in the trial court's docket. The timeliness issue in the instant case, however, is moot, because as we have explained above, this court does not have jurisdiction in the instant appeal for lack of final appealable order.

{¶8} For the foregoing reasons, the state's "Motion to Dismiss Appellant's Notice of Appeal" is granted, not for the reasons stated therein, but for the reason that there is no final appealable order.

{¶9} Appeal dismissed for lack of final appealable order.

DIANE V. GRENDALL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.