

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2017-T-0091
JONATHAN R. EMERINE,	:	
Defendant-Appellant.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2015 CR 00693.

Judgment: Dismissed and remanded.

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

Jonathan R. Emerine, pro se, PID: A683-007, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Jonathan R. Emerine, appeals from the August 1, 2017 judgment of the Trumbull County Court of Common Pleas, denying his timely pro se petition to vacate or set aside judgment without a hearing. On appeal, appellant asserts the trial court erred in failing to enter written findings of fact and conclusions of law.

Appellee, the state of Ohio, agrees. Accordingly, we dismiss this appeal and remand the matter to the trial court for the entry of such findings of fact and conclusions of law.

{¶2} On September 4, 2015, the Trumbull County Grand Jury indicted appellant on one count of rape and three counts of gross sexual imposition. Appellant was represented by counsel, entered a not guilty plea at his arraignment, and waived his right to a speedy trial.

{¶3} A jury trial commenced on March 28, 2016. Following trial, the jury found appellant guilty. On May 2, 2016, the trial court sentenced appellant to an aggregate term of 31 and one-half years to life in prison and labeled him a Tier III sex offender. The court also notified appellant that post-release control is mandatory for five years.

{¶4} Appellant filed a timely direct appeal with this court, Case No. 2016-T-0048. In that appeal, appellant asserted the trial court erred in not providing lesser included offense instructions and alleged his conviction was against the manifest weight of the evidence. Finding no error, this court affirmed the judgment of the trial court on March 31, 2017. *State v. Emerine*, 11th Dist. Trumbull No. 2016-T-0048, 2017-Ohio-1206. Appellant's appeals to the Supreme Court of Ohio were not accepted for review. *State v. Emerine*, 150 Ohio St.3d 1432, 2017-Ohio-7567; *State v. Emerine*, 151 Ohio St.3d 1457, 2017-Ohio-8842.

{¶5} On June 15, 2017, appellant filed a timely pro se petition to vacate or set aside judgment pursuant to R.C. 2953.21. The state filed a motion to dismiss the petition on July 28, 2017. On August 1, 2017, the trial court denied appellant's petition without a hearing and without entering findings of fact and conclusions of law. Appellant

filed the instant appeal, Case No. 2017-T-0091, and raises the following assignment of error:¹

{¶6} “The trial court abuses discretion when it denied (dismissed) petitioner-appellant’s postconviction relief petition without issuing findings and facts and conclusions of law.”

{¶7} “A decision or order dismissing a petition for postconviction relief is not a final appealable order until the trial court files the requisite findings of fact and conclusions of law. See *State v. Lester* (1975), 41 Ohio St.2d 51, 55 * * *. When a trial court dismisses a postconviction relief petition without holding an evidentiary hearing, it must enter findings of fact and conclusions of law. R.C. 2953.21(C). ‘While a trial court need not discuss every issue that the petitioner raises or engage in an elaborate and lengthy discussion in its findings of fact and conclusions of law, its findings must be sufficiently comprehensive and pertinent to the issues to form a basis upon which the evidence supports the conclusion.’ *State v. McKnight*, 4th Dist. No. 06CA645, 2006-Ohio-7104, at ¶5, citing *State v. Calhoun* (1999), 86 Ohio St.3d 279, 291-292 * * *.” (Parallel citations omitted.) *State v. Henry*, 11th Dist. Lake No. 2008-L-178, 2010-Ohio-1446, ¶39.

{¶8} In this case, the record reveals and the state concedes that the trial court erred in failing to file findings of fact and conclusions of law when it denied appellant’s timely petition for postconviction relief without a hearing. Thus, we dismiss and remand for the required findings. See *State v. Perkins*, 5 Ohio App.3d 182, 184 (8th Dist.1982).

1. The state filed a “Waiver of Further Briefing” on November 28, 2017, agreeing with appellant that he is entitled to written findings of fact and conclusions of law of the trial court’s denial of his timely petition for postconviction relief and that this case should be dismissed and remanded.

{¶9} For the foregoing reasons, appellant's sole assignment of error is well-taken. This matter is dismissed and remanded for further proceedings consistent with this opinion.

THOMAS R. WRIGHT, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.