

[Cite as *State v. Sapp*, 2002-Ohio-3922.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2002 CA 8
v.	:	T.C. CASE NO. 97 CR 0177
	:	
WILLIAM K. SAPP	:	(Criminal Appeal from Common Pleas Court)
	:	Defendant-Appellant

OPINION

Rendered on the 2nd day of August, 2002.

ANDREW P. PICKERING, Atty. Reg. No. 0068770, Assistant Prosecuting Attorney, 50 East Columbia Street, 4th Floor, Springfield, Ohio 45501
Attorney for Plaintiff-Appellee

DAVID J. GRAEFF, Atty. Reg. No. 0020647, P. O. Box 1948, Westerville, Ohio 43081
Attorney for Defendant-Appellant

FREDERICK N. YOUNG, J.

{¶1} William K. Sapp appeals from the trial court’s January 10, 2002, judgment entry denying his petition for post-conviction relief. In two related assignments of error, Sapp argues that we must remand the above-captioned cause for the trial court to issue

findings of fact and conclusions of law. In response, the state agrees that the trial court erred in denying Sapp's petition without filing findings of fact and conclusions of law, as required by R.C. 2953.21(C). The state insists, however, that the above-captioned cause must be dismissed, rather than remanded, as the trial court's judgment entry is not a final, appealable order.

{¶2} Upon review, we find the state's argument to be persuasive. At the outset, we note that our prior decisions, and those of other Ohio appellate courts, have been inconsistent regarding the proper disposition of an appeal when a defendant alleges that the trial court erred in denying his post-conviction relief petition without findings of fact and conclusions of law. At times, we have reversed the trial court's judgment and remanded the cause for the issuance of findings of fact and conclusions of law. See, e.g., *State v. Riggins* (1993), 91 Ohio App.3d 350; *State v. Bess* (Aug. 1, 1997), Clark App. No. 96-CA-0066. On other occasions, we have dismissed the appeal for lack of a final, appealable order. See, e.g., *State v. Mitchell* (Dec. 7, 1988), Montgomery App. No. 10956; *State v. Payne* (June 6, 1992), Montgomery App. No. 13016. A thorough review of Ohio law persuades us that the latter approach is the correct one.

{¶3} In *State v. Lester* (1975), 41 Ohio St.2d 51, the Ohio Supreme Court found that the trial court had erred in denying a petition for post-conviction relief without issuing findings of fact and conclusions of law. As a result, the *Lester* court remanded the matter to the trial court for the issuance of such findings of fact and conclusions of law. Seven years later, in *State v. Mapson* (1982), 1 Ohio St.3d 217, the Ohio Supreme Court again recognized that a judgment entry denying post-conviction relief must include findings of fact and conclusions of law. In *Mapson*, however, the court reasoned

“that a judgment entry filed without such findings is incomplete and it thus does not commence the running of the time period for filing an appeal therefrom.” Similarly, in *State ex rel. Ferrell v. Clark* (1984), 13 Ohio St.3d 3, the court held that a judgment entry denying post-conviction relief without findings of fact and conclusions of law is not a final, appealable order. As a result, a defendant cannot appeal from such an entry.¹ Id.

{¶4} Although *Mapson* cites *Lester*, *Mapson* does not discuss the fact that *Lester* required a remand for findings of fact and conclusions of law rather than a dismissal for lack of a final, appealable order. In any event, in *Mapson* and *Ferrell*, both of which post-date *Lester*, the Ohio Supreme Court unambiguously held that a judgment entry denying post-conviction relief without findings of fact and conclusions of law is not a final, appealable order from which an appeal may be taken. In the present case, the trial court’s judgment entry does not include the required findings of fact and conclusions of law. Consequently, on the authority of *Mapson* and *Ferrell*, we hereby DISMISS the present appeal for lack of a final, appealable order.

.....

BROGAN, J. and FAIN, J., concur.

Copies mailed to:

Andrew P. Pickering
David J. Graeff
Hon. Richard J. O’Neill

¹ In *Ferrell*, the court noted that the proper remedy is for a defendant to seek a writ of mandamus directing the trial court to issue findings of fact and conclusions of law.