

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-10-132
- vs -	:	<u>OPINION</u> 6/22/2015
ANTHONY CONN,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 13 CR 29504

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Anthony Conn, #A699225, Allen Correctional Institution, P.O. Box 4501, Lima, Ohio 45801, defendant-appellant, pro se

RINGLAND, J.

{¶ 1} Defendant-appellant, Anthony Conn, appeals a decision of the Warren County Court of Common Pleas regarding his motion to return property. For the reasons stated below, we dismiss this appeal for lack of jurisdiction.

{¶ 2} Following an investigation conducted by the Warren County Drug Task Force, appellant was indicted on numerous counts involving the trafficking, possession, and illegal

manufacture of steroids. During the investigation, appellant's home was searched pursuant to a warrant and several items were seized. On January 29, 2014, appellant pled guilty to two counts of trafficking in drugs in violation of R.C. 2925.03(A)(1), four counts of trafficking in drugs in violation of R.C. 2925.03(A)(2), one count of child endangering in violation of R.C. 2919.22(B), and one count of illegal manufacture of drugs in violation of R.C. 2925.04(A). Appellant was sentenced to an aggregate prison term of five years, through a combination of concurrent and consecutive sentences, and ordered to pay a fine of \$42,500.

{¶ 3} In April 2014, appellant appealed to this court and challenged his convictions and sentence. In May 2015, this Court reversed as to the imposition of consecutive sentences but affirmed the rest of the trial court's decision. *State v. Conn*, 12th Dist. Warren Nos. CA2014-04-059, CA2014-04-061, and CA2014-06-084, 2015-Ohio-1766.

{¶ 4} While the case was pending on appeal, appellant filed a motion in the trial court on June 6, 2014, for the return of property that was seized but not designated as contraband, lost, stolen, or abandoned. Specifically, appellant requested the state return the following: (1) five firearms and the accessories associated with the firearms, (2) a Toshiba laptop and charger, (3) a black gym bag, and (4) "other weight equipment" that included a MP3 player with Bose earbuds, a weight lifting chest strap, two weight lifting belts, two sets of weight lifting gloves, two sets of wrist straps, four weight lifting shirts, towels, chalk, and baby powder. Appellant instructed the items to be returned to his "agent" and wife, Jessica Conn.

{¶ 5} On July 8, 2014, the trial court denied appellant's motion to return property. The court refused to return the firearms to appellant, because as a result of his convictions, he is under a disability and may not lawfully possess any firearms. The court noted that if appellant's wife wishes to have the firearms, she must file separately and ensure the disposal of the firearms. The court also refused to return any of the other property seized while the appeal is pending because the evidence may be needed in a new trial against appellant.

Appellant did not appeal this decision.

{¶ 6} Appellant filed additional motions seeking the return of property on August 27, 2014. These motions requested the return of his Toshiba laptop and the five firearms. On October 3, 2014, the trial court granted in part and denied in part appellant's subsequent motion to return property. In regards to the firearms, the court found the matter was "res judicata" as it had already ruled on the matter in its July 8 entry. The court also noted neither appellant, nor appellant's wife, as an agent of appellant, may possess the firearms as appellant is under a disability. However, the court permitted the return of the laptop, black gym bag, and other weight equipment. On October 10, 2014, the court filed an entry amending the October 3 entry. The entry ordered the return of the laptop but denied the return of the gym bag and the other weight equipment while the case is still under appeal.

{¶ 7} Appellant now appeals from the October 3 and October 10 entries, asserting two assignments of error. For ease of analysis, we will discuss the two assignments of error together.

{¶ 8} Assignment of Error No. 1:

{¶ 9} THE TRIAL COURT ERRED, AND DUE PROCESS WAS DENIED, WHEN THE COURT DENIED THE APPELLANT'S MOTION FOR THE RETURN OF PROPERTY THAT WAS NOT THE SUBJECT OF FORFEITURE.

{¶ 10} Assignment of Error No. 2:

{¶ 11} THE TRIAL COURT ERRED, AND DUE PROCESS WAS DENIED WHEN THE COURT FAILED TO ORDER THE STATE TO RETURN ACCESSORIES RELATIVE TO THE PROPERTY SOUGHT FOR RETURN IN THE APPELLANT'S MOTION.

{¶ 12} Appellant challenges the merits of the trial court's decision denying his motion to return the firearms, black gym bag, other weight equipment, and the trial court's failure to address the return of a computer charger and the firearm accessories. However, whether or

not the trial court erred in its decision regarding the return of appellant's property, we find that we lack jurisdiction to entertain this appeal.

{¶ 13} In this case, the trial court issued three decisions regarding appellant's request to return property. In the court's July 8 decision, it refused the return of the firearms and the return of the other property while the appeal was pending. The court's July 8 decision was a valid final judgment and a final appealable order. The decision was an order issued after a conviction that determined the extent of appellant's rights in his seized property. Therefore, it affected a substantial right and was made upon a summary application in an action after judgment. R.C. 2505.02(B)(2). See *State v. Turner*, 2d Dist. Montgomery No. 21877, 2007-Ohio-5975, ¶ 10 (order directing disposition of seized property issued after conviction is final appealable order).

{¶ 14} Trial courts lack authority to reconsider their own valid final judgments in criminal cases. *State v. Raber*, 134 Ohio St.3d 350, 2012-Ohio-5636, ¶ 20. There is no authority for filing a motion for reconsideration of a final judgment at the trial court level in a criminal case and therefore a motion for reconsideration of a final judgment is a nullity. *State v. Leach*, 12th Dist. Clermont No. CA2004-02-011, 2005-Ohio-2370, ¶ 6, citing *State v. Vanelli*, 9th Dist. Wayne No. 02CA0066, 2003-Ohio-2717, ¶ 8. In turn, a judgment entered on a motion for reconsideration is also a nullity and a party cannot appeal such a judgment. *Id.*

{¶ 15} While the July 8 entry was a final judgment, appellant went on to file a second motion, the purpose of which was to have the trial court reconsider its denial of his motion to return property. Therefore, the trial court's October 3 and October 10 entries regarding the motions to return property are a judgment on a motion for reconsideration and are nullities. Consequently, the entries from which appellant appeals from are not a final appealable

order.¹ As such, we lack jurisdiction to entertain an appeal from an order denying in part and granting in part a motion for reconsideration.

{¶ 16} Appellant failed to appeal from a final appealable order. Accordingly, the appeal must be dismissed for lack of jurisdiction.

{¶ 17} Appeal dismissed.

HENDRICKSON, J., concurs.

PIPER, P.J., concurs in judgment only.

PIPER, P.J., concurring in judgment only.

{¶ 18} I arrive at the same result but with different reasoning, therefore I concur in judgment only. The July 8 order affected a substantial right as to Conn's claim to regain his firearms, but did not affect a substantial right as to Conn's claim for immediate possession of the other property, i.e., the computer laptop and gym bag. The order regarding the firearms as to Conn, had finality and disposed of Conn's right to claim said firearms. The order regarding the other property did not have finality, and did not dispose of Conn's right to later claim said property. In regard to the latter property, it cannot be said that Conn had a substantial right affected.

{¶ 19} A "substantial right" is one recognized by the law as entitling the person to enforce or protect that right. A criminal defendant does not have a right to possess items held as evidence pending the outcome of his or her case. *See State ex rel. Bates vs. Court of Appeals for the Sixth Appellate District*, 130 Ohio St.3d 326, 2011-Ohio-5456. Thus a substantial right was not affected as to ownership of the computer laptop and gym bag.

1. To the extent property was given back to appellant under the trial court's October 3 and 10 entries, appellant's right to this property has been rendered moot.

Conn does not have a final appealable order pertaining to that property as required by R.C. 2505.02.

{¶ 20} Regarding the firearms, Conn had a substantial right affected. His claim to ownership was terminated by the trial court. Thus, in this regard, there was a final appealable order subject to appeal regarding the firearms. Yet, Conn failed to timely appeal the trial court's order and did not request leave to file a delayed appeal on this issue.² Thus, Conn's claim as to the firearms should be dismissed because the July 8 order was not appealed. If one appeals from the wrong entry, the case must be dismissed at the appellate level. *State v. Painter*, 12th Dist. Clermont No. CA2012-04-032, 2013-Ohio-529. The majority is correct that Conn's second motion for the return of the firearms was of no consequence.

{¶ 21} Once a final order regarding the firearms had been entered, the trial court no longer had authority to reconsider returning the firearms to Conn. The narrow exception to this rule would only exist if the trial court vacated its previous order due to realized concerns arising from the requirements of procedural due process compliance. See *State v. Owens*, 4th Dist. Athens No. 99CA34, 2000 WL 334170, *5 (Mar. 28, 2000) (noting that a motion for reconsideration may be appropriate and the trial court is not powerless to reconsider its previous order concerning disposal of seized property since the trial court has inherent authority to vacate an order that was obtained improperly).

{¶ 22} To the extent Conn has had the return of some of his personal property (i.e., the computer laptop) Conn's claim for relief is moot. As to property that has been retained pending appellant's earlier appeal, there is no finality to its disposition and no substantial right

2. In Conn's earlier sentencing appeal, he did request a delayed appeal. It is also interesting to note, *State v. Turner*, 2d Dist. Montgomery No. 21877, 2007-Ohio-5975, is a situation where a delayed appeal was permitted concerning the return of seized property.

has been affected, thus there is no final appeal order.³ If all issues regarding Conn's original charges have been determined, a final determination as to the property, other than the firearms, becomes appropriate for disposition. Until such time as there is a final appealable order regarding that property, Conn's appeal in this regard also must be dismissed.

3. Conn's delayed appeal regarding his sentence has been resolved by this court, yet what has since then occurred at the trial court level as to Conn's resentencing is not a part of our current record.