

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-11-1211

Appellee

Trial Court No. CR0198406534

v.

James R. Eubank

**DECISION AND JUDGMENT**

Appellant

Decided: August 3, 2012

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

James R. Eubank, pro se.

\* \* \* \* \*

**YARBROUGH, J.**

**I. Introduction**

{¶ 1} Appellant, James R. Eubank, appeals a judgment of the Lucas County Court of Common Pleas which denied his “Motion to Amend Court’s Order of July 25, 1984 [sic, should be 1985] for Return of Bond Money.” For the reasons that follow, we dismiss the appeal.

### **A. Facts and Procedural Background**

{¶ 2} On September 6, 1984, appellant was indicted on a charge of attempted rape. The record reflects that appellant did not appear for his arraignment on September 13, 1984, for the charge of attempted rape. Judge Reno Riley issued a warrant for appellant's arrest and set bail at \$5,000 with no percentage allowed for his failure to appear. Appellant was arrested on October 2, 1984, pursuant to the warrant.

{¶ 3} While awaiting a trial on the attempted rape charge, appellant was convicted on two counts of involuntary manslaughter and two counts of aggravated arson on July 19, 1985. After his sentencing on July 25, 1985, the attempted rape case was dismissed and the trial court made an entry which stated, "Bond ordered released."

{¶ 4} On October 13, 2011, appellant filed the instant motion titled, "Motion to Amend Court's Order of July 25, 1984 [sic] for Return of Bond Money, to Include Payment of Bond Immediately to James R. Eubank at the Grafton Correctional Institution, Grafton, Ohio Forthwith." In his motion, appellant claimed that he paid the \$5,000 bail with a cashier's check on the day of his arrest. Deputy Clerk Karen Sharp attested via affidavit that she found no evidence that appellant paid the bail in question. Based upon Sharp's affidavit, the trial court denied this motion on August 1, 2011. Specifically, the trial court found that appellant "failed to present credible evidence to support the merits of his motion \* \* \*." Appellant now appeals.

## **B. Assignments of Error**

{¶ 5} Appellant raises the following two assignments of error:

THE TRIAL COURT ABUSED ITS DISCRETION AND DUE PROCESS OF THE APPELLANT BY DENYING THE MOTION MADE BY THE APPELLANT TO HAVE HIS BOND MONEY RETURNED AND DENIAL BY THE TRIAL COURT WAS UNREASONABLE, ARBITRARY, AND UNCONSCIENABLE [sic]:

THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW WHEN IT CONSIDERED THE FALSE AND MISLEADING EVIDENCE IN THE AFFIDAVIT OF DEPUTY CLERK KAREN SHARP, WITHOUT GIVING THE APPELLANT TIME TO RESPOND FOR REBUTTAL:

## **II. Analysis**

### **A. The trial court lacked subject matter jurisdiction**

{¶ 6} We must first consider whether this court has jurisdiction to determine this appeal because appellant filed his motion after his case was dismissed. A jurisdictional defect cannot be waived. *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998); *see also Eisenberg v. Peyton*, 56 Ohio App.2d 144, 148, 381 N.E.2d 1136 (8th Dist.1978). Since it cannot be waived, jurisdiction can be raised at anytime even on appeal for the first time. *Id.* If a court acts without jurisdiction then the decision is void.

*Id.* Therefore, if the trial court lacked jurisdiction to enter the judgment, this court lacks jurisdiction to renew the order.

{¶ 7} Very few Ohio courts have considered the procedural effect in a criminal case following a nolle prosequi or a dismissal. *See State ex rel. Flynt v. Dinkelacker*, 156 Ohio App.3d 595, 2004-Ohio-1695, 807 N.E.2d 967, ¶ 19 (1st Dist.) (Nolle prosequi concludes a prosecution and it cannot be reinstated at a later date.) *See also City of Columbus v. Stires*, 9 Ohio App.2d 315, 317, 224 N.E.2d 369 (10th Dist.1967). (After an entry of nolle prosequi, a defendant is returned to the position he was in before charges were filed.) However, a Florida court has held that “A nolle prosequi effectively ends the proceeding, and, any action taken subsequent to the filing of the nolle prosequi is a nullity.” *Sadler v. State*, 949 So.2d 303, 305 (Fla.Dist.Ct.App.2007). This opinion is a good summation of the effect of nolle prosequi and is consistent with cases from our state.

{¶ 8} Based on the facts of the current case, we hold the trial court did not have subject matter jurisdiction to hear appellant’s motion. Since appellant’s criminal case concluded at the time the dismissal was entered, the trial court lacked jurisdiction over appellant’s motion which was filed some 25 years later. Because the trial court’s decision was void, this court lacks jurisdiction over the appeal. *State v. Gilmer*, 160 Ohio App.3d 75, 2005-Ohio-1387, 825 N.E.2d 1180, ¶ 6 (6th Dist.) (void judgment is not a final appealable order).

**III. Conclusion**

{¶ 9} Accordingly, the appeal is dismissed. Pursuant to App.R. 24, appellant is ordered to pay costs.

Appeal dismissed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Arlene Singer, P.J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
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