

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001604-MR

RONALD SCHNEIDER

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
ACTION NO. 08-CR-00750

COMMONWEALTH OF KENTUCKY

APPELLEE

AND

NO. 2011-CA-001605-MR

JOHN C. MORGAN

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
ACTION NO. 08-CR-00758

COMMONWEALTH OF KENTUCKY

APPELLEE

NORWINIA MORGAN

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
ACTION NO. 08-CR-00760

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: DIXON, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Ronald Schneider, John C. Morgan, and Norwinia Morgan bring these consolidated appeals from an August 3, 2011, Order of Restitution.

We reverse and remand.¹

Before the circuit court, each appellant separately entered a guilty plea pursuant to a plea agreement with the Commonwealth.² The record is clear that the circuit court accepted each of the guilty pleas in October of 2009. However, after scouring the circuit court records, we were unable to locate final judgments of

¹ The separate appeals arise from the same order of restitution entered in case numbers 08-CR-00750, 08-CR-00758 and 08-CR-00760 in the Christian Circuit Court. By order entered January 20, 2013, this Court consolidated all three appeals for review and disposition.

² Ronald Schneider, John C. Morgan, and Norwinia Morgan were separately indicted but all charges stemmed from their collective assault of Sam Taylor that allegedly occurred in 2008.

conviction as to Ronald Schneider, John C. Morgan, or Norwinia Morgan. In its brief, the Commonwealth points out that “the record does not contain a typical formal final judgment.” Commonwealth’s Brief at 2, fn 4.

Accordingly, in July of 2014, this Court ordered supplemental briefing by the parties upon the issue of whether final judgments of conviction were entered as to appellants. The Commonwealth responded, but appellants’ failed to timely respond. In its response, the Commonwealth concluded that “it does not appear that final judgments of conviction were entered in these cases.” Commonwealth’s Brief at 5. We agree.

A review of the record reveals that there are form plea offers filed in the circuit court record in each of these appeals. And, the circuit court judge signed the plea offers and checked a box signifying acceptance of the guilty pleas. Yet, the plea offer forms were not entered of record by the circuit court clerk as judgments, and these plea offer forms do not comply with the mandates of Kentucky Rules of Criminal Procedure (RCr) 11.04. 9 Leslie W. Abramson, *Kentucky Practice – Criminal Practice and Procedure* § 32:42 (5th ed. 2013).

The circuit court’s jurisdiction to enter orders of restitution is a material issue in each appeal. The date of entry and probation conditions contained in each final judgment of conviction are essential to resolution of these appeals. Moreover, the circuit court may only order restitution after a final judgment of conviction. *See* Kentucky Revised Statutes (KRS) 532.032; KRS 431.200; *Com. v. Steadman*, 411 S.W.3d 717 (Ky. 2013). As no final judgment of

conviction was entered as to each appellant, we are of the opinion it was premature and an error for the circuit court to order restitution. Thus, we reverse the August 3, 2011, order as to restitution and remand for entry of final judgments of conviction as to appellants.

For the foregoing reasons, the Order of Restitution entered by the Christian Circuit Court is reversed and this case is remanded for proceedings consistent with this Opinion.

ALL CONCUR.

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