

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. John W. Wise, J.
-vs-	:	Hon. Patricia A. Delaney, J.
	:	
JEREMIAH BARTON	:	Case No. 10-CA-113
	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of
Common Pleas Case No. 2002-CR-571

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: September 21, 2011

APPEARANCES:

For Plaintiff-Appellee:

JAMES J. MAYER, JR 0021148
Richland County Prosecutor
38 S. Park St.
Mansfield, Ohio 44902

BENJAMIN ELDER 0069358
Assistant Prosecuting Attorney
(Counsel of Record)

For Defendant-Appellant:

MELISSA PRENDERGAST 0075482
Assistant State Public Defender
250 E. Broad St., Ste. 1400
Columbus, Ohio 43215

Delaney, J.

{¶1} Defendant-Appellant Jeremiah Barton appeals from the amended sentencing entry of the Richland County Court of Common Pleas, correcting an omission pursuant to *State v. Baker* (2008), 119 Ohio St.3d 197, 893 N.E.2d 163. The State of Ohio is Plaintiff-Appellee.

STATEMENT OF THE CASE¹

{¶2} On September 20, 2002, Appellant was indicted by the Richland County Grand Jury for one count of endangering children, a felony of the second degree, in violation of R.C. 2919.22(B)(1) (count one). He was also charged with one count of felonious assault, a felony of the second degree, in violation of R.C. 2903.11(A)(1) (count two).

{¶3} The court ordered a presentence investigation and a forensic examination to determine Appellant's amenability to treatment. On November 15, 2002, Appellant pled guilty to the charges. On February 28, 2003, the trial court sentenced Appellant to five years in prison on the felonious assault to be served consecutively to a four year sentence on the child endangering. The trial court, however, reserved the four year sentence for future evaluation. Appellant was delivered to the Ohio Department of Rehabilitation and Corrections ("ODRC") on March 5, 2003, to begin serving his five year sentence on the felonious assault. That sentence was set to expire on March 5, 2008. Appellant did not file a direct appeal of the trial court's February 28, 2003 sentencing entry.

¹ A Statement of Facts is not necessary for determining this appeal.

{¶4} On July 26, 2007, the trial court ordered Appellant to be conveyed from prison to the Richland County Jail. The court scheduled Appellant for pre-trial hearing on July 30, 2007. On October 3, 2007, the court then ordered another forensic exam. On October 30, 2007, the court held a sentencing hearing. By entry dated November 8, 2007, the trial sentenced Appellant to the four years on count one, consecutive to the five years previously imposed on count two. Appellant likewise did not file an appeal of the trial court's November 8, 2007 sentencing entry.

{¶5} Appellant was then sent back to ODRC on November 9, 2007. The court granted Defendant 103 days credit for jail time served between July 30 and November 9, 2007. Appellant was never released from custody and was still serving his original five year portion of his sentence on count two when the sentence on count one was imposed.

{¶6} On August 3, 2010, Appellant filed a Motion for Final Appealable Order, pursuant to *State v. Baker* (2008), 119 Ohio St.3d 197, 893 N.E.2d 163. On August 27, 2010, the trial court filed an Amended Sentencing Entry. The trial court's amended sentencing entry stated that on October 30, 2007, Appellant was convicted by admitting guilt and was sentenced to a four year term on count one and to a five year term on count two, and that the sentences were to be served consecutively.

{¶7} Appellant raises two Assignments of Error:

{¶8} "I. THE TRIAL COURT ACTED WITHOUT AUTHORITY WHEN IT SENTENCED MR. BARTON TO PRISON IN 2007. FIFTH AND FOURTEENTH AMENDMENTS, UNITED STATES CONSTITUTION SECTION 10, ARTICLE I, OHIO CONSTITUTION.

{¶9} “II. TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SECTION 10, ARTICLE I OF THE OHIO CONSTITUTION.”

I & II

{¶1} At this time, Appellant appears to raise two claims related to the sentencing entry of November 8, 2007. First, Appellant argues the trial court lacked jurisdiction to impose a sentence on count one because Appellant had already been released from serving his sentence on count two. Second, Appellant argues his trial counsel was ineffective for failing to object to the court exercising its authority to impose a sentence on count one.

{¶2} At the outset, this appeal arises from the trial court’s amended sentencing entry to include the language that he was convicted by admitting guilt and now appeals this entry; however, he does not limit his arguments to the entry with respect to his manner of conviction. We do not find this to be the intent of the Supreme Court in *Baker*.

{¶3} The purpose of trial court’s October 27, 2010 amended sentencing entry was to comply with Crim.R. 32 to identify the “means of conviction”. This Court has previously rejected review of assignments of error which attempt to raise additional issues that are not related to narrow function of including the manner of conviction. *State v. Harris*, 5th Dist. No. 10-CA-49, 2011-Ohio-1626.

{¶4} Accordingly, Appellant’s assignments of error are overruled.

{¶5} For the foregoing reasons, the judgment of the Richland County Court of Common Pleas is affirmed.

By: Delaney, J. and

Wise, J. concur; and

Farmer, P.J., dissents

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JOHN W. WISE

Farmer, P.J., dissents

{¶6} I respectfully dissent based upon the reasoning in my dissent in *State v. Harris*, Richland App. No. 10-CA-49, 2011-Ohio-1626.

HON. SHEILA G. FARMER

[Cite as *State v. Barton*, 2011-Ohio-4971.]

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JEREMIAH BARTON	:	
	:	
Defendant-Appellant	:	Case No. 10-CA-113
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. SHEILA G. FARMER

HON. JOHN W. WISE