

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	Case No. 09CA3100
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
CARL SAULTZ,	:	
	:	
Defendant-Appellant.	:	Released 10/20/09

APPEARANCES:

James E. Barrington, Chillicothe, Ohio, for appellant.

Michael M. Ater, ROSS COUNTY PROSECUTOR, and Jeffrey C. Marks, ROSS COUNTY ASSISTANT PROSECUTOR, Chillicothe, Ohio, for appellee.

Harsha, J.

{¶1} Carl Saultz appeals his convictions for five counts of non-support of his minor child. Saultz contends that the trial court violated his statutory right to a speedy trial. Alternatively, Saultz argues that his trial counsel provided ineffective assistance because he failed to respond to the State’s reciprocal discovery request in a reasonable time, which would have prevented the speedy trial time from tolling. However, because the sentencing entry did not contain the guilty plea, the jury verdict, or the finding of the court upon which the convictions were based, it does not constitute a final, appealable order.

I. Facts

{¶2} In July 2007, the Ross County grand jury indicted Saultz for five counts of failure to provide adequate support to his minor child in violation of R.C. 2919.21, all fifth

degree felonies. The grand jury re-indicted Saultz on August 15, 2008 on the same charges because the original indictment did not include culpable mental states. On December 18, 2008, Saultz pled no contest to all five counts. In a “Judgment Entry of Guilty” filed on January 7, 2009, the trial court found him guilty of each offense. In a signed “Judgment Entry of Sentence” time-stamped on February 9, 2009, the trial court noted that Saultz had “been convicted of the offenses of five counts of Non-Support, ORC 2919., [sic] each a felony of the fifth degree.” The court found that the first and second counts of the indictment merged, and the third and fourth counts of the indictment merged. After the court sentenced Saultz to six months in prison for the second, fourth, and fifth counts, to be served concurrently, he filed this appeal.

II. Assignments of Error

{¶3} Saultz assigns the following errors for our review:

#1: The trial court erred to the manifest prejudice of Appellant by not dismissing the charges as being beyond the prosecutable time limits allowed by law.

#2: Appellant was deprived of his constitutional rights to effective assistance of counsel, to his manifest prejudice, when his trial counsel failed to either immediately respond to the State’s request for reciprocal discovery or timely advise the State that no response was necessary and would not be forthcoming (delay time would not have been charged against Defendant if his counsel had taken either step).

III. No Final, Appealable Order

{¶4} Before we address the merits of the appeal, we must decide whether we have jurisdiction to do so. Appellate courts “have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district[.]” Section 3(B)(2), Article IV, Ohio Constitution; see, also, R.C. 2505.03(A); R.C. 2953.02. If a court’s order is not

final and appealable, we have no jurisdiction to review the matter and must dismiss the appeal. *Eddie v. Saunders*, Gallia App. No. 07CA7, 2008-Ohio-4755, at ¶11. In the event that the parties do not raise the jurisdictional issue, we must raise it sua sponte. *Sexton v. Conley* (Aug. 7, 2000), Scioto App. No. 99CA2655, 2000 WL 1137463, at *2.

{¶5} “[I]n order to decide whether an order issued by a trial court in a criminal proceeding is a reviewable final order, appellate courts should apply the definitions of ‘final order’ contained in R.C. 2505.02.” *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, at ¶6, quoting *State v. Muncie*, 91 Ohio St.3d 440, 444, 2001-Ohio-93, 746 N.E.2d 1092. Under R.C. 2505.02(B)(1), an order is a final order if it “affects a substantial right in an action that in effect determines the action and prevents a judgment[.]” “Undoubtedly, a judgment of conviction qualifies as an order that ‘affects a substantial right’ and ‘determines the action and prevents a judgment’ in favor of the defendant.” *Baker* at ¶9.

{¶6} “A judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court.” *Id.* at syllabus, explaining Crim.R. 32(C). Furthermore, allowing multiple documents to create a final appealable order is improper; all the required information must be present in a single document. *Id.* at ¶17.

{¶7} Here, the court’s sentencing entry did not contain “the guilty plea, the jury verdict, or the finding of the court” upon which the convictions were based. The court simply stated that Saultz had “been convicted of the offenses of five counts of Non-Support, ORC 2919., [sic] each a felony of the fifth degree[.]” without reference to his no

contest plea or the court's finding of guilt. Thus, the court's sentencing entry is not a final, appealable order.

{¶8} Accordingly, we dismiss this appeal for lack of a final, appealable order.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the APPEAL BE DISMISSED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Kline, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.