

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

THE STATE OF OHIO,	:	Case No. 09CA3110
	:	09CA3111
Plaintiff-Appellee,	:	
	:	<u>DECISION AND</u>
v.	:	<u>JUDGMENT ENTRY</u>
	:	
LANCE L. GIBBS,	:	
	:	Released 12/3/09
Defendant-Appellant.	:	

APPEARANCES:

Pamela C. Childers, 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} In this consolidated appeal, Lance L. Gibbs challenges two judgments of conviction entered by the Ross County Common Pleas Court. After Gibbs entered a no contest plea, the court found him guilty of two counts of felonious assault. In a related case, Gibbs entered a no contest plea to one count of failure to restrain or confine a vicious dog, and the court found Gibbs guilty. Gibbs contends that the trial court erred in denying his pre-sentence motion to withdraw his no contest pleas. He also argues that the indictment for failure to restrain or confine a vicious dog was deficient because it omitted an essential element of the offense. However, because the sentencing entries in both cases do not contain the guilty plea, the jury verdict, or the finding of the court upon which the convictions were based, they do not constitute final, appealable orders. Thus, we lack jurisdiction to consider this appeal and must dismiss it.

I. Facts

{¶2} In November 2008, the Ross County Grand Jury indicted Gibbs on two counts of felonious assault, in violation of R.C. 2903.11, in case number 08CR521. In January 2009, the Grand Jury indicted Gibbs for one count of failure to confine or restrain a vicious dog, in violation of R.C. 955.22, in case number 09CR07. The trial court consolidated the actions on the State's motion. On February 25, 2009, Gibbs pled no contest to all three counts. Although the cases had been consolidated, the trial court issued a separate "Judgment Entry of Guilty" for each case on March 13, 2009, finding Gibbs guilty on all counts. Before sentencing, Gibbs filed a motion to withdraw his plea. The trial court denied the motion after a hearing and proceeded to sentencing.

{¶3} On April 13, 2009, the trial court issued a signed "Judgment Entry of Sentence" for each case. The entry in case number 08CR521 notes that Gibbs had "been convicted of the offenses of two (2) counts of Felonious Assault, ORC 2903.11, each a felony of the second degree." The entry in case number 09CR07 notes that Gibbs had "been convicted of the offense of Confinement or Restraint of Vicious Dog, ORC 955.22, a felony of the fourth degree." After the court sentenced Gibbs, he filed a notice of appeal from both sentencing entries, and we sua sponte consolidated the matters.

II. Assignments of Error

{¶4} Gibbs assigns the following errors for our review:

THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING
APPELLANT'S MOTION TO WITHDRAW HIS NO CONTEST PLEA.

THE TRIAL COURT COMMITTED PLAIN ERROR BY FINDING
APPELLANT GUILTY OF A VIOLATION OF R.C. 955.22,
CONFINEMENT OR RESTRAINT OF A VICIOUS DOG, WHEN THE

INDICTMENT OMITTED AN ESSENTIAL ELEMENT OF THE OFFENSE.

III. No Final, Appealable Order

{¶5} 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.

{¶6} “[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.

{¶7} “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.” *Baker* at syllabus, explaining Crim.R. 32(C). Furthermore, allowing multiple documents to create a final appealable order is improper; all required information must be present in a single document. *Id.* at ¶17.

{¶8} Here, the court’s sentencing entries do 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 Gibbs had “been convicted of the offenses of two (2) counts of Felonious Assault, ORC 2903.11, each a felony of the second degree” and that Gibbs had “been convicted of the offense of Confinement or Restraint of Vicious Dog, ORC 955.22, a felony of the fourth degree.” The court makes no reference to the no contest plea or the court’s finding of guilt in either entry. Thus, the court’s sentencing entries are not final, appealable orders.

{¶9} 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.

Abele, P.J. & McFarland, 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.