

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

STATE OF OHIO,	:	Case No. 09CA23
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
TIMOTHY J. TAYLOR,	:	
	:	
Defendant-Appellant.	:	Released 4/7/10
	:	
	:	

APPEARANCES:

Timothy J. Taylor, Chillicothe, Ohio, pro se.

James B. Grandey, HIGHLAND COUNTY PROSECUTOR, and Anneka P. Collins, HIGHLAND COUNTY ASSISTANT PROSECUTOR, Hillsboro, Ohio, for appellee.

Harsha, J.

{¶1} Timothy J. Taylor appeals the sentence imposed by the Highland County Common Pleas Court after the court vacated his original sentence because it failed to advise him of potential post-release control sanctions. Taylor argues that the court improperly ordered him to serve consecutive, as opposed to concurrent, prison terms in violation of the Supreme Court of Ohio’s ruling in *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470 and R.C. 5145.01. However, because the resentencing entry does 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. Thus, we lack jurisdiction to consider this appeal and must dismiss it.

I. Facts

{¶2} In 1996, a Highland County grand jury indicted Taylor on: Count 1 –

murder, in violation of former R.C. 2903.02, an unspecified felony; Count 2 – abuse of a corpse, in violation of former R.C. 2927.01, a fifth degree felony; Count 3 – tampering with evidence, in violation of R.C. 2921.12(A)(1), a third degree felony; and Count 4 – theft, in violation of former R.C. 2913.02, a fourth degree felony. Taylor pled guilty to Counts 2, 3, and 4, and on Count 1, Taylor pled guilty to the lesser included offense of involuntary manslaughter in violation of former R.C. 2903.04, a first degree felony.¹ The trial court sentenced Taylor to ten years in prison for involuntary manslaughter, one year for abuse of a corpse, four years for tampering with evidence, and one year for the theft crime. The court ordered that Taylor serve the sentences consecutively to each other, for a total of 16 years in prison. The court also ordered that Taylor serve the sentences consecutively to “any sentence imposed upon the defendant herein in Clermont County, Ohio[.]”

{¶13} In April 2009, Taylor filed a motion to correct the judgment, arguing that his sentence was void because the court failed to advise him of any post-release control sanctions. The trial court agreed, vacated his sentence, and held a resentencing hearing. At the hearing, Taylor made the additional argument that when the court selected a prison term for each charge, the terms had to run concurrently with each other and with a sentence he received from a court in Clermont County based on the Supreme Court of Ohio’s ruling in *Foster* and R.C. 5145.01. However, the trial court rejected this argument and imposed the same sentence as before, with the addition of its advisement on post-release control sanctions. On July 14, 2009, the trial court

¹ Given the sparse record on appeal, we cannot determine with certainty the date Taylor allegedly committed these crimes. We presume Taylor correctly notes the date as August 8, 1996 in his appellate brief. Our notations that Taylor was charged under “former” versions of the various statutory provisions are based on this assumption.

issued a signed “Judgment Entry of Confinement.” The entry includes Taylor’s sentence and notes that:

The Court finds that the defendant has been found guilty and convicted of:

- Count 1 – Involuntary manslaughter
- Count 2 – Abuse of a corpse
- Count 3 – Tampering with evidence
- Count 4 – Theft

After the clerk journalized the entry, Taylor filed this appeal.

II. Assignments of Error

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

ASSIGNMENT OF ERROR I: The Trial Court erred [sic] by disregarding statutory requirements of R.C. 5145.01 to a mandatory concurrent sentence. Violating the Ohio.Const.I.Sec 2, Equal Protection, and the 5th, and 14th Amendments of the [U]nited States Constitution Due Process of Law, and Equal Protection of Law.

ASSIGNMENT OF ERROR II: The Trial Court erred [sic] by using judicial factfinding and applying R.C. 2929.14(E)(4). Which has been severed by the Supreme Court of Ohio in STATE V. FOSTER for violating the rule sent down by the United States Supreme Court in BLAKELY V. WASHINGTON, which held tht [sic] judicial factfinding violated the 6th Amendment of the United States Constitution. In addition this also violated the Appellant’s 5th, and 14th Amendment rights to Due Process, and Equal Protection of Law.

ASSIGNMENT OF ERROR III: The Trial Court erred [sic] by enhancing this appellant’s sentence beyond the ‘Statutory Maximum’, as defined by the United States Supreme Court in Blakely v. Washington. Violating the Appellant’s rights under Ohio.Const.I.Sec 2, as well as his Constitutional rights under the 5th, 6th and 14th Amendments of the United States Constitution.

III. 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. If 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. Thus, after reviewing the trial court’s “Judgment Entry of Confinement,” we ordered the parties to submit supplemental briefs concerning our jurisdiction in this case.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;

² Taylor titled his brief as a “Motion for Reconsideration Pursuant to App.R. 26” under the mistaken assumption that we had already issued a decision in his case.

all required information must be present in a single document. Id. at ¶17.

{¶8} Here, the court’s resentencing entry does 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 it found that Taylor “has been found guilty and convicted of” various offenses. The court made no reference to his guilty plea. Thus, the court’s entry is not a final, appealable order. The State of Ohio has candidly agreed in a supplemental filing that the order does not comply with the requirements of *Baker*.

{¶9} Accordingly, we dismiss this appeal for lack of a final, appealable order. However, we note that Taylor “has an adequate remedy at law by way of a motion in the trial court requesting a revised sentencing entry.” *Dunn v. Smith*, 119 Ohio St.3d 364, 2008-Ohio-4565, 894 N.E.2d 312, at ¶8, citing *Garrett v. Wilson*, Richland App. No. 07-CA-60, 2007-Ohio-4853, at ¶7.

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 Highland 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.

McFarland, P.J. & Kline, 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.