

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

STATE OF OHIO,	:	Case No. 09CA3306
	:	
Plaintiff-Appellee,	:	
	:	<u>DECISION AND</u>
v.	:	<u>JUDGMENT ENTRY</u>
	:	
RONTEZ L. DARGET,	:	
	:	
Defendant-Appellant.	:	Released 7/21/10

APPEARANCES:

Rontez L. Darget, Lancaster, Ohio, pro se appellant.

Mark E. Kuhn, SCIOTO COUNTY PROSECUTOR, and Pat Apel, SCIOTO COUNTY ASSISTANT PROSECUTOR, Portsmouth, Ohio, for appellee.

Harsha, J.

{¶1} Rontez L. Darget appeals the sentence imposed by the Scioto County Common Pleas Court after he pleaded guilty to trafficking in drugs and tampering with evidence. He contends that the trial court erred in various ways by ordering him to serve consecutive prison terms and that his trial counsel provided ineffective assistance. However, because the sentencing 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} The Scioto County Grand Jury indicted Darget on two counts of trafficking in drugs, one count of possession of drugs, one count of conspiracy to traffic drugs, and

one count of tampering with evidence. In a negotiated plea agreement with the State, Darget pleaded guilty to: 1.) one count of trafficking in drugs, a second degree felony, in violation of R.C. 2925.03(A)(1) and (C)(1)(d); and 2.) one count of tampering with evidence, a third degree felony, in violation of R.C. 2921.12(A)(1). The trial court sentenced Darget to five years in prison for the trafficking offense and four years in prison for the tampering offense. The court ordered Darget to serve the sentences consecutively, for an aggregate of nine years in prison. Subsequently, Darget filed this appeal.

II. Assignments of Error

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

THE TRIAL COURT[] ERRED WHEN IMPOSING CONSECUTIVE TERMS ARISING FROM THE SAME SIMILAR ANIMUS CONDUCT.

TRIAL COURT ERRED WHEN IMPOSING CONSECUTIVE SENTENCING [sic] WITHOUT MAKING THE REQUIRED STATUTORY FINDINGS PURSUANT TO R.C. 2929.14(E).

WHEATHER [sic] TRIAL COUNSEL WAS INEFFECTIVE BY COERCION [sic] MR. DARGET INTO TAKING A DEAL FOR 5 YEARS, BUT APPELLANT WAS SENTENCED TO 9 YEARS.

TRIAL COURT ABUSED THEIR [sic] DISCRETION DURING SENTENCING, BY IMPOSING CONSECUTIVE SENTENCING [sic], AND FAILING TO GIVE EQUAL PUNISHMENT BETWEEN CO-DEFENDANT[S].

III. 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. 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.

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

{¶7} Here, the court's sentencing 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 Darget “has been convicted of” trafficking in drugs and

tampering with evidence. The court made no reference to his guilty plea. Thus, the court's entry is not a final, appealable order.

{¶8} Accordingly, we dismiss this appeal for lack of a final, appealable order. However, we note that Darget "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 Scioto 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. & 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.