

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

LEE E. GUTERBA,

Defendant-Appellant.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 21 CO 0020**

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Criminal Appeal from the  
Columbiana County Municipal Court of Columbiana County, Ohio  
Case No. 2020 CRB 1206

**BEFORE:**

Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

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**JUDGMENT:**

Dismissed.

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*Atty. Vito Abruzzino*, Columbiana County Prosecutor and *Atty. K. Bret Apple*, Assistant Prosecuting Attorney, 105 South Market Street, Lisbon, Ohio 44432, for Plaintiff-Appellee

*Atty. Scott C. Essad*, 5500 Market Street, Suite 99, Youngstown, Ohio 44512, for Defendant-Appellant.

Dated: March 24, 2022

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**WAITE, J.**

{¶1} On June 25, 2021, Appellant Lee Guterba filed a notice of appeal of a June 18, 2021 Columbiana County Municipal Court “verdict entry.” The timeline of events after this entry are directly at issue, here. After it was filed, the trial court scheduled a sentencing hearing for June 29, 2021. Perplexingly, on June 25, 2021, Appellant filed a notice of appeal and a motion entitled “Motion to Stay Sentencing Hearing.” The court denied the motion and held the sentencing hearing as scheduled even though the notice of appeal remained pending. The court filed its sentencing judgment entry on June 29, 2021.

{¶2} “[T]he general rule is that when an appeal is taken from the district court the latter court is divested of jurisdiction, except to take action in aid of the appeal, until the case is remanded to it by the appellate court.” *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162 (1978). There are a few exceptions to this rule, as “the trial court does retain jurisdiction over issues not inconsistent with that of the appellate court to review, affirm, modify or reverse the appealed judgment, such as the collateral issues like contempt, appointment of a receiver and injunction.” *Id.* at 97, citing *In re Kurtzhalz*, 141 Ohio St. 432, 48 N.E.2d 657 (1943); *Goode v. Wiggins*, 12 Ohio St. 341 (1861); *Fawick Airflex Co. v. United Electrical Radio & Machine Workers*, 90 Ohio App. 24, 103 N.E.2d 283 (8th Dist.1951). Since none of these exceptions applied in this case, it is readily apparent that the trial court was divested of jurisdiction to sentence Appellant due to the premature notice of appeal.

{¶3} In order to constitute a final, appealable order in a criminal matter, a judgment entry must “set forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time-stamp by the clerk.” *State v. Porch*, 7th Dist. Mahoning No. 12 MA 85, 2013-Ohio-754, ¶ 5, citing *State v. Baker*, 119 Ohio St.3d. 197, 2008-Ohio-3330, 893 N.E.2d 163; *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142.

{¶4} Without a valid sentence the appealed entry lacks one crucial element of a final appealable order. Further, we note that the sentencing entry the trial court did file does not contain the fact that Appellant was convicted. Even if the trial court had retained jurisdiction to sentence Appellant, this entry also omits a crucial element and would not have been final and appealable. As such, two elements of a final appealable order have not been met. Accordingly, this appeal is dismissed for lack of a final appealable order.

Donofrio, P.J., concurs.

Robb, J., concurs.

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For the reasons stated in the Opinion rendered herein, Appellant's appeal is hereby dismissed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**