

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-09-1270

Appellee

Trial Court No. CR0200601214

v.

Terry Lee Lampkin, Jr.

DECISION AND JUDGMENT

Appellant

Decided: December 7, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, Evy M. Jarrett and Kevin A. Pituch, Assistant Prosecuting Attorneys, for appellee.

Kenneth J. Rexford, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellee, the state of Ohio, has filed motions for reconsideration or for correction of judgment entry and to certify. Appellant has responded in opposition to the motion for reconsideration, but does not oppose the motion to correct the judgment entry.

Motion for Reconsideration/Errata

{¶ 2} The standard to be applied to a motion for reconsideration is "whether the motion * * * calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been." *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, syllabus.

{¶ 3} Appellee's motion for reconsideration and request for correction is based upon an inaccuracy in the factual statement referring to the trial court's correction of appellant's original sentencing judgment entry to comply with Crim.R. 32(C), pursuant to *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. Appellant does not oppose this correction. Upon review of the record we conclude that a correction is warranted. Accordingly, appellee's motion for reconsideration is well-taken and is granted, as it relates to correction of an error in the factual statement.

{¶ 4} The court hereby issues this notice of errata and orders that the decision and judgment in this case, dated October 8, 2010, be corrected as follows:

{¶ 5} In ¶ 2, the portion of the third sentence, which reads "conducted a sentencing hearing and resented him by a judgment entry issued on September 21, 2009" is changed to "and, based upon the original sentencing hearing, issued a judgment entry on September 21, 2009, in compliance with Crim.R. 32(C)."

{¶ 6} This change does not affect the outcome of the case, since correction of the sentencing judgment entry under *Baker*, supra, does not require a de novo sentencing

hearing. See *Baker*, supra. Contrary to appellee's suggestion, the error here did not involve the omission of postrelease control notification, which does require a new sentencing hearing. See *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250; R.C. 2929.291.

Motion to Certify

{¶ 7} Appellee also asserts that our classification of the nunc pro tunc judgment issued pursuant to correction of a void judgment entry, pursuant to *Baker*, supra, as a final, appealable order is in conflict with the Third District Court of Appeals, in *State v. Lester* (May 12, 2010), 3d Dist. No. 2-1-20. Appellant agrees that a conflict exists.

{¶ 8} On September 29, 2010, the Supreme Court of Ohio determined that a conflict exists between these two cases and ordered that the parties brief the following issue:

{¶ 9} "Is a nunc pro tunc judgment filed for the purpose of correcting a clerical omission in a prior sentencing judgment by adding 'means of conviction' language, which was readily apparent throughout the record and to the parties but not originally included as required by Crim.R. 32(C), a final order subject to appeal?"

{¶ 10} See *State v. Lester*, 126 Ohio St.3d 1579, 2010-Ohio-4542.

{¶ 11} To be sure any broader issues surrounding *Baker* judgment entries are addressed, we find a conflict between our holding in this case and *State v. Lester* (May 12, 2010), 3d Dist. No. 2-1-20, and we certify the following questions to the Supreme Court of Ohio:

{¶ 12} (1) May a trial court utilize a "nunc pro tunc" judgment to correct a void judgment entry under *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330?

{¶ 13} (2) Is that nunc pro tunc judgment filed to correct a void judgment entry as required by *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330 a final, appealable order, despite any prior appeals that may have been taken from the first judgment entry?

{¶ 14} Accordingly, appellee's motion to certify a conflict is well-taken and is granted.

MOTIONS GRANTED.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.