

[Cite as *State v. Harris*, 2010-Ohio-5374.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95128

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MARIO HARRIS

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED IN PART AND REMANDED FOR
RESENTENCING; DISMISSED IN PART**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-506498 and CR-510551

BEFORE: Stewart, J., Rocco, P.J., and Dyke, J.

RELEASED AND JOURNALIZED: November 4, 2010

FOR APPELLANT

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MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, Mario Harris, appeals the orders in two criminal cases that deny his motions for sentencing. Appellant argues that because the trial court failed to impose the driver's license suspension and fine mandated by statute for drug trafficking convictions, his sentences are void and he must be resentenced. Because this appeal challenges the denial of appellant's motions for sentencing filed in two separate criminal cases, we will address each case separately.

Case No. CR-510551

{¶ 2} In Case No. CR-510551, appellant was charged in a three-count indictment with drug possession in violation of R.C. 2925.11(A), drug trafficking in violation of R.C. 2925.03(A)(2), and possession of criminal tools in violation of R.C. 2923.24(A).¹ Each count included a forfeiture specification for a vehicle used in the commission of the offense. On May 27, 2008, appellant entered a guilty plea to the trafficking offense with the forfeiture specification. The remaining counts were nolle.

{¶ 3} In the judgment entry dated May 27, 2008, the trial court imposed a prison term of six-months, to be served consecutive to the sentence in Case No. CR-506498, and ordered forfeiture of the vehicle. However, the trial court neglected to suspend appellant's driver's license. Pursuant to statute, appellant's fifth degree felony trafficking conviction carries with it a mandatory driver's license suspension of between six months and five years. R.C. 2925.03(G). When a sentence fails to impose a mandated term such as a driver's license suspension, that sentence is void. *State v. Donahue*, 8th Dist. No. 89111, 2007-Ohio-6825, at ¶22. Where a sentence is void because it does not contain a statutorily mandated term, the proper remedy is to resentence the defendant. *Id.*, citing *State v. Beasley* (1984), 14 Ohio St.3d 74, 471

¹ We call attention to the fact that all documents and journal entries subsequent to the indictment show the defendant's name as "Mario Harris," while the indictment shows the defendant's name as "Calvin Harris."

N.E.2d 774. Therefore, we reverse the judgment in Case No. CR-510551 and remand for resentencing.

Case No. CR-506498

{¶ 4} In Case No. CR-506498, the grand jury indicted appellant on multiple counts including drug trafficking, drug possession, possession of criminal tools, and having a weapon while under disability. The trafficking offenses included a schoolyard specification, a one-year firearm specification, and a forfeiture specification for cash, cell phones, and a Smith & Wesson revolver. The weapons under disability offense included a forfeiture specification for the revolver.

{¶ 5} On May 27, 2008, appellant entered a guilty plea to one count of drug trafficking in violation of R.C. 2925.03(A)(1) with the schoolyard, firearm, and forfeiture specifications (a third degree felony), and one count of having a weapon while under disability in violation of R.C. 2923.13(A)(3) with the forfeiture specification. The remaining counts were nolle. The guilty pleas, disposition of the remaining counts, and order of forfeiture were recorded in a judgment entry dated May 27, 2008.

{¶ 6} By separate entry dated June 3, 2008, the court sentenced appellant to a mandatory one-year prison term on the firearm specification, to be served consecutive to a three-year term on the trafficking offense, and a one-year term on the weapons under disability offense, for a total of five

years. However, the court neglected to suspend appellant's driver's license or to impose a fine. Pursuant to statute, a third-degree felony drug trafficking conviction carries with it a mandatory fine and driver's license suspension. R.C. 2925.03(D)(1)(2) and (G).

{¶ 7} While this case presents the same error as in the prior case, a procedural error by the trial court in announcing its judgment mandates we reach a different result. In issuing judgment, the trial court employed two separate journal entries to record appellant's plea and sentence. However, only one document can constitute a final appealable order. *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, at ¶17. Since the second judgment entry fails to account for the disposition of the counts that were nolle and for the order of forfeiture recorded in the first entry, it is not a final appealable order. As a result, we are without jurisdiction to review any order of the trial court relating to Case No. CR-506498, including the trial court's denial of appellant's motion to resentence. While our disposition of the prior case suggests the proper course of action for the trial court, we find we have no choice but to dismiss the appeal in this case for lack of a final appealable order.

{¶ 8} Accordingly, appellant's single assignment of error is sustained in part. The judgment in Case No. CR-510551 is reversed and remanded for

resentencing. The appeal in Case No. CR-506498 is dismissed for lack of a final appealable order.

It is ordered that the parties bear their own costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, JUDGE

KENNETH A. ROCCO, P.J., and
ANN DYKE, J., CONCUR