[Cite as *State v. Duff*, 2009-Ohio-6727.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	JUDGES:
STATE OF OHIO	:	W. Scott Gwin, P.J.
	:	John W. Wise, J.
Plaintiff-Appellee	:	Julie A. Edwards, J.
	:	
-vs-	:	Case No. CT2009-0034
	:	
	:	
DENNIS DUFF	:	O P I N I O N
Defendant-Appellant		

CHARACTER OF PROCEEDING:	Criminal Appeal from Muskingum County Court Case No. TRD 0202311
JUDGMENT:	Dismissed
DATE OF JUDGMENT ENTRY:	December 15, 2009

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
MARIA N. KALIS Assistant Prosecuting Attorney Muskingum County, Ohio 27 North Fifth Street, P.O. Box 189 Zanesville, Ohio 43702-0189	DENNIS DUFF Inmate #447-439 P.O. Box 69 London, Ohio 43140

Edwards, J.

{¶1} Defendant-appellant, Dennis Duff, appeals from the July 7, 2009, Judgment of the Muskingum County Court denying his Motion to Dismiss. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On April 8, 2002, appellant was cited for no operator's license in violation of R.C. 4507.02(A)(1). On April 15, 2002, appellant entered a plea of not guilty to the charge. A trial was scheduled for May 7, 2002.

{¶3} Thereafter, on June 25, 2002, appellant entered a plea of guilty to the charge of no operator's license. After appellant failed to appear for a scheduled hearing on October 8, 2002, a bench warrant was issued for his arrest.

{¶4} On December 5, 2008, appellant, who was incarcerated on another matter, filed a "Motion for Concurrent Sentence." Appellant's motion was denied pursuant to an Entry filed on December 9, 2008.

{¶5} Subsequently, on January 2, 2009, appellant filed a Motion to Dismiss "as being time served." Appellant, in his motion, argued that he was serving a seven year sentence on another case and that, pursuant to R.C. 2929.41(A), a sentence for a misdemeanor [in the case sub judice] shall be served concurrently with a sentence of imprisonment for a felony. Appellant's motion was denied on January 22, 2009.

{¶6} On July 7, 2009, appellant filed a Motion to Dismiss pursuant to Crim.R. 32(A). Appellant, in his motion, moved the trial court to dismiss the case against him because "this Court has lost jurisdiction to sentence this Defendant." Appellant specifically argued that "an unreasonable time has elapsed for this Court to sentence

this Defendant and jurisdiction to do so is now at issue." Appellant noted that he had never been sentenced for the charge of no operator's license. Appellant's motion was denied on July 7, 2009.

{¶7} Appellant now raises the following assignment of error on appeal:

{¶8} "LOWER COURT ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT'S CRIMINAL RULE 32 MOTION TO DISMISS WHEN IT HAS BEEN MORE THAN SEVEN (7) YEARS SINCE THE APPELLANT PLEAD GUILTY TO ONE COUNT OF OMV WITHOUT A LICENSE AND THE LOWER COURT HAS REFUSED TO SENTENCE APPELLANT. LOWER COURT HAS LOST JURISDICTION IN THIS MATTER AND IS VIOLATING APPELLANT'S DUE PROCESS RIGHTS TO HOLD THIS CASE OPEN AND LODGED A DETAINER AGAINST THE APPELLANT."

{¶9} However, we must first address whether the judgment appellant appealed from is a final, appealable order.

{¶10} In *State v. Baker,* 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, the Ohio Supreme Court held that "[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) the time stamp showing journalization by the clerk of court." *Id.* at the syllabus. The *Baker* decision is based upon an interpretation of Crim.R. 32(C). Crim.R. 32(C) requires that a judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. The court in *Baker* stated that a more logical interpretation of this Crim.R. 32(C) language is that a "trial court is required to sign and journalize a document memorializing the sentence and the manner of the conviction: a guilty plea, a

no contest plea upon which the court has made a finding of guilt, a finding of guilt based upon a bench trial, or a guilty verdict resulting from a jury trial." *Baker* at paragraph 14.

{¶11} In the case sub judice, because the trial court has not sentenced appellant, there is no document journalizing any sentence. See *City of Cuyahoga Falls v. Andy* (March 27, 1996), Summit App. No. 17529, 1996 WL 137439 at 1 ("The trial court has not sentenced Andy. Accordingly, the judgment of the trial court is not a final, appealable order,…).

{¶12} Accordingly, the judgment of the trial court is not a final, appealable order.

{¶13} Appellant's appeal is, therefore, dismissed.

By: Edwards, J.

Gwin, P.J. and

Wise, J. concur

s/Julie A. Edwards

s/W. Scott Gwin

s/John W. Wise

JUDGES

JAE/d0921

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FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
DENNIS DUFF	:	
Defendant-Appellant	:	CASE NO. CT2009-0034

For the reasons stated in our accompanying Memorandum-Opinion on file, the appeal in the case sub judice is dismissed. Costs assessed to appellant.

s/Julie A. Edwards

s/W. Scott Gwin

s/John W. Wise

JUDGES