

[Cite as *State v. Buoscio*, 2010-Ohio-4118.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

SAMUEL BUOSCIO

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Sheila G. Farmer, J.

Case No. 2010CA035

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2007CR057D

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

August 24, 2010

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Farmer, J.

{¶1} On January 7, 2007, the Richland County Grand Jury indicted appellant, Samuel Buoscio, on two counts of forgery in violation of R.C. 2913.31(A)(2).

{¶2} On October 17, 2007, appellant pled no contest to one of the forgery counts. The remaining count was dismissed. The trial court found appellant guilty and sentenced him to six months in prison.

{¶3} On September 2, 2008, appellant filed a motion to withdraw his plea and petition for postconviction relief. By judgment entry filed March 11, 2010, the trial court denied the motion.

{¶4} Appellant filed an appeal and this matter is now before his court for consideration. Assignments of error are as follows:

I

{¶5} "THE TRIAL COURT COMMITTED PLAIN ERROR BY ACCEPTING A PLEA OF NO CONTEST WITHOUT THE ADMISSION OF THE FACTS ALLEGED IN THE INDICTMENT PURSUANT TO O.CRIM.R. 11(B)(2)."

II

{¶6} "THE TRIAL COURT COMMITTED PREJUDICIAL PLAIN ERROR TO DEFENDANT/APPELLANT'S DEFENSE BY DENYING THE O.CRIM.R. 32.1 MOTION, BASED ON COUNSEL'S INEFFECTIVENESS WHEN FRAUDULENTLY RELAYING A FALSE OPINION OF WHAT THE STATE'S EXPERT WITNESS WOULD TESTIFY TO."

III

{¶7} "THE TRIAL COURT COMMITTED PLAIN ERROR TO APPELLANT BY NOT LIBERALLY CONSTRUING, AS A PRE-TRIAL O.CRIM.R. 32.1 MOTION, UPON IMPOSITION OF A VOID SENTENCE."

IV

{¶8} "THE TRIAL COURT COMMITTED PLAIN ERROR BY CHARGING & CONVICTING DEFENDANT/APPELLANT WITHOUT PROPER JURISDICTION WHEREAS THE ALLEGED CRIMES HAPPENED IN ANOTHER COUNTY."

V

{¶9} "THE TRIAL COURT COMMITTED PLAIN ERROR TO DEFENDANT/APPELLANT'S DEFENSE, BY NOT CONSIDERING BOTH EXPERT WITNESSES DOCUMENT EXAMINATION REPORTS BEFORE ACCEPTING A PLEA OF NO CONTEST."

VI

{¶10} "THE TRIAL COURT COMMITTED PLAIN ERROR BY CONVICTING DEFENDANT/APPELLANT ON THE SAME SET OF CIRCUMSTANCES HE HAD BEEN PREVIOUSLY BEEN CONVICTED OF IN FEDERAL COURT."

VII

{¶11} "THE TRIAL COURT LOST JURISDICTION TO IMPOSE A SENTENCE UPON DEFENDANT/APPELLANT DUE TO THE UNJUSTIFIED DELAY BETWEEN THE PLEA OF NO CONTEST AND SENTENCING."

{¶12} At the outset, we must examine the October 18, 2007 sentencing entry in light of the Supreme Court of Ohio's decision in *State v. Baker*, 119 Ohio St.3d 200, 2008-Ohio-3330. The *Baker* court at syllabus held the following:

{¶13} "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. (Crim.R.32(C), explained.)"

{¶14} The *Baker* court at ¶17 further held, "Only one document can constitute a final appealable order."

{¶15} Upon review of the sentencing entry, we find it does not include the "finding of the court upon which the conviction is based." Therefore, it is not a final appealable order and this court lacks jurisdiction to entertain the appeal. See, Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2953.02.

{¶16} Pursuant to *Baker*, the appeal is dismissed.

By Farmer, J.

Gwin, P.J. concur and

Hoffman J. dissents.

s/ Sheila G. Farmer

s/ W. Scott Gwin

JUDGES

SGF/db 0810

