

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
WILLIAM JORDAN	:	Case No. 2010CA00249
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 2009CR1838

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: November 1, 2010

For Plaintiff-Appellee

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Farmer, J.

{¶1} On November 24, 2009, the Stark County Grand Jury indicted appellant, William Jordan, on two counts of trafficking in cocaine in violation of R.C. 2925.03(A)(1) and (C)(4)(d).

{¶2} On March 8, 2010, appellant pled guilty as charged. On said date, the trial court filed a journal entry sentencing form in order to convey appellant to prison. The entry stated it was not intended to be a final sentencing order. By judgment entry filed March 16, 2010, the trial court sentenced appellant to two years on each count, to be served concurrently.

{¶3} On July 30, 2010, appellant filed a motion to reconsider sentence and request court order for P.S.I. By judgment entry filed August 20, 2010, the trial court denied the motion.

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

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{¶5} "THE TRIAL COURT ERRED BY FILING A SECOND JOURNAL ENTRY, AFTER COMMITTING THE DEFENDANT TO PRISON, THE SECOND JOURNAL ENTRY HAS A MANDATORY TERM NOT IMPOSED ON THE ORIGINAL JOURNAL ENTRY, SUBSTANTIALLY CREATING A MORE SEVERE CHARGE THAN THE DEFENDANT WAS COMMITTED TO PRISON ON."

I

{¶6} Appellant claims the trial court erred in filing a second sentencing entry, as the second entry created a more severe penalty than the first entry. We disagree.

{¶7} At the outset, we note the state claims appellant's appeal is untimely. We agree.

{¶8} Pursuant to App.R. 3(A), an "appeal as of right" shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by App.R. 4. According to App.R. 4(A), a "party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed***." "It is fundamental that without the timely filing of a notice of appeal, the Court of Appeals is without jurisdiction to entertain an appeal as of right. See, *Bosco v. City of Euclid* (1974), 38 Ohio App. 2d 40***." *State v. Smith* (1979), Butler App. No. CA 78-03-0020.

{¶9} On September 2, 2010, appellant filed his notice of appeal on the trial court's August 20, 2010 judgment entry. This entry was the denial of his July 30, 2010 motion to reconsider sentence and request court order for P.S.I. However, in his brief, appellant is challenging the trial court's judgment entry on sentencing filed March 16, 2010; therefore pursuant to App.R. 4, appellant's appeal to challenge his sentence was untimely filed. The filing of the subsequent motion for reconsideration did not "toll" the time for the filing of the notice to appeal. *Smith, supra*.

{¶10} In addition, pursuant to the trial court's March 16, 2010 judgment entry, appellant "withdrew his plea of not guilty and***replied that he is guilty of the crimes***as charged in the Indictment, which said plea was accepted by the Court, and upon which the defendant was duly convicted of the charged offenses." The trial court found "the sentence imposed upon the defendant is authorized by law and has been jointly recommended by the defendant and the prosecution, pursuant to Revised Code Section 2953.08(D)."

{¶11} R.C. 2953.08 governs appeals based on felony sentencing guidelines. Subsection (D)(1) specifically states, "A sentence imposed upon a defendant is not subject to review under this section if the sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge."

{¶12} Based upon the foregoing, this appeal is dismissed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ John W. Wise

JUDGES

SGF/db 1021

