[Cite as *State v. Maxon*, 2017-Ohio-9365.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

State of Ohio,	:	Case No. 17CA17
Plaintiff-Appellee	:	
v.	:	DECISION AND JUDGMENT ENTRY
Rodney Maxon,	:	
Defendant-Appellant.	:	**RELEASED: 12/14/2017**

Hoover, J.

{¶1} Appellant Rodney Maxon appeals an order of the Ironton Municipal Court finding him guilty and sentencing him to 30 days in the Lawrence County Jail, all of which was suspended, and ordering him to pay restitution. As it appeared we may not have jurisdiction to consider this matter because the order from which he is appealing does not specify the crime the Court found him guilty of committing, we ordered Maxon to file a memorandum addressing this jurisdictional issue. *See* Magistrate's Order, November 6, 2017; *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142 (judgment or entry must set forth fact of conviction to constitute final appealable order). In response, Maxon filed a memorandum in support of jurisdiction which contends that because the amended complaint alleged a single offense (criminal damaging in violation of R.C. 2909.06(A)(1)), the fact that the entry does not specify the offense of conviction does not prevent the order from being final. He contends that if he faced a multi-count indictment, the order would not be final, citing *State v. Ellison*, 2017-Ohio-284, 81 N.E.3d 853, ¶ 21-22 (4th Dist.).

{¶2} We find that the trial court's order did not meet the requirements of *Lester, supra* and is not a final, appealable order. The order must include the offense of conviction to constitute a final appealable order. We lack jurisdiction to address the merits and dismiss the appeal.

Legal Analysis

{¶3} The Ohio Constitution limits an appellate court's jurisdiction to the review of "final orders" of lower courts. Ohio Constitution, Article IV, Section 3(B)(2). In accordance with this constitutional directive, we " 'must sua sponte dismiss an appeal that is not from a final appealable order.' " *State v. Brewer,* 4th Dist. Meigs No. 12CA9, 2013-Ohio-5118, 2013 WL 6148000, ¶ 5, quoting *State v. Marcum*, 4th Dist. Hocking Nos. 11CA8 and 11CA10, 2012-Ohio-572, 2012 WL 474059, ¶ 6.

{¶4} The General Assembly has enacted R.C. 2505.02 to specify which orders are final. *Smith v. Chen*, 142 Ohio St.3d 411, 2015-Ohio-1480, 31 N.E.3d 633, ¶ 8. To constitute a final appealable order under R.C. 2505.02, a judgment of conviction and sentence must satisfy the substantive provisions of Crim.R. 32(C) and include: (1) the fact of conviction; (2) the sentence; (3) the judge's signature; and (4) the time stamp indicating the entry upon the journal by the clerk. *State v. Jackson,* 2017-Ohio-7469, ___ N.E.3d ___, ¶ 11 citing *State v. Lester,* 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶ 14.

{¶5} In a criminal case involving multiple counts, a final order need not contain a reiteration of those counts that were resolved on the record in other ways, such as dismissal, nolled counts, or not guilty findings. *State ex rel. Rose v. McGinty*, 128 Ohio St.3d 371, 2011-Ohio-761, 944 N.E.2d 672, ¶ 3. But unless the charges that do not

result in conviction have been terminated by a journal entry, the hanging charges prevent the conviction from being a final order under R.C. 2505.02(B) because it does not determine the action by resolving the entire case. *See State v. Ellison*, 2017-Ohio-284, 81 N.E.3d 853, ¶ 21-22 (4th Dist.) citing *State v. Gillian*, 4th Dist. Gallia No. 15CA3, 2016-Ohio-3232, ¶ 6.

{¶6} Contrary to Maxon's contentions, the *Ellison* decision does not stand for the proposition that the "fact of conviction" is sufficient if it indicates "guilty" but does not include the offense for which the defendant is guilty. Maxon attached a copy of the indictment to his memorandum and argued that when the order and the indictment are read together, it is clear that Maxon could only be found guilty of criminal damaging. However, our need to use the indictment to determine Maxon's conviction offense violates the *Baker* "single document" rule. *State v. Baker,* 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, ¶ 17; *State v. Cole*, 4th Dist. Pickaway No. 09CA16, 2010-Ohio-4774, ¶ 6 ("allowing multiple documents to create a final appealable order is generally improper, and all required information must be present in a single document"); *City of Olmstead Falls v. Bowman*, 8th Dist. Cuyahoga No. 85066, 2005-Ohio-2459, ¶ 5 (case dismissed for lack of final appealable order where entry simply indicated that defendant was "found noncompliant at a hearing and 'to serve/pay as sentenced' " because order failed to fully indicate the verdict or conviction).

{¶7} Additionally, as the Supreme Court of Ohio has made clear, the word "conviction" means "an 'act or process of judicially finding someone guilty *of a crime.'* " (Emphasis added.) *Baker* at ¶ 11 (citing Black's Law Dictionary (7th Ed. 1999) 335. Here the order states, "after hearing the evidence, the court finds defendant guilty." It

does not state the crime of which Maxon is guilty. Therefore, the order does not adequately and properly state the "fact of conviction."

{¶8} The court's order does not properly state the fact of conviction. It must identify the offense of which the defendant has been found guilty. It is not a final, appealable order and we lack jurisdiction over this appeal. **APPEAL DISMISSED. COSTS TO APPELLANT.**

{¶9} The clerk shall serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail and record service on the docket. **SO ORDERED.**

Abele, J. and McFarland, J.: Concur.

FOR THE COURT

_____
Marie Hoover
Judge