

[Cite as *State v. Carter*, 2009-Ohio-4161.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 24274

Appellee

v.

RYAN P. CARTER

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 05 12 4570 (A)

Appellant

DECISION AND JOURNAL ENTRY

Dated: August 19, 2009

SLABY, Judge.

{¶1} Defendant-Appellant, Ryan P. Carter, has attempted to appeal his sentence imposed by the Summit County Court of Common Pleas. Because the order from which Defendant has appealed is a nullity, this Court vacates that order.

{¶2} Defendant was indicted on seven charges that arose from an attempt on the lives of his father and step-mother: two counts of attempted murder, one count of aggravated burglary, two counts of aggravated robbery, and two counts of felonious assault. Defendant entered an initial plea of not guilty to the charges, but on March 14, 2006, he appeared before the trial court and pled guilty to each charge. On April 11, 2006, the trial court sentenced Defendant to an aggregate prison term of fifteen years. Defendant did not appeal.

{¶3} More than two years later, Defendant filed a pro se “Motion to Correct Judgment and Journal Entry to Comply with Criminal Rule 32(C)” in the trial court. Citing this Court’s decision in *State v. Miller*, 9th Dist. No. 06CA0046-M, 2007-Ohio-1353, he alleged that the trial

court's April 2006 sentencing order was not a final appealable order because it "fail[ed] to contain a finding of guilt as to each count in the indictment, stating only that the court 'accepted' the Defendant's guilty plea." Defendant also noted that his goal was to obtain a means of appealing his conviction despite the fact that the time for filing an appeal pursuant to App.R. 4(A) had long passed. On May 21, 2008, the trial court issued a second sentencing order that differed from the first in three respects: it stated that "[t]he Court finds that the Defendant previously pled NOT GUILTY to the charges in the Indictment on January 4, 2006"; it stated that Defendant's guilty pleas "were accepted by the Court, and the Court found the Defendant guilty[.]"; and it omitted findings made by the trial court pursuant to R.C. 2929.13(B). Defendant filed a notice of appeal to this Court on June 17, 2008. His arguments on appeal assign error to the trial court's second sentencing entry, but do not allege error in the original proceedings.

{¶4} Our discussion begins with the nature of the trial court's April 2006 sentencing order. In *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, the Supreme Court of Ohio clarified the requirements of Crim.R. 32(C) with respect to orders that are final and appealable pursuant to R.C. 2505.02:

"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." *Baker* at syllabus.

The Supreme Court explained "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." *Id.* at ¶14. Consequently, an order need not contain

both a guilty plea and a finding of guilt by the trial court to comply with the requirements of Crim.R. 32(C). *Id.*

{¶5} The requirements set forth in *Baker* determine whether an order is final and appealable pursuant to R.C. 2505.02 and Crim.R. 32(C), regardless of whether an order was journalized before *Baker* was decided. See *State ex rel. Agosto v. Cuyahoga Cty. Court of Common Pleas*, 119 Ohio St.3d 366, 2008-Ohio-4607, at ¶9. In this case, the April 2006 sentencing order set forth Defendant’s guilty plea, the sentence, the signature of the trial court judge, and entry on the journal by the clerk of court. It was, therefore, a final appealable order as defined by *Baker*. Under the circumstances of this case, Defendant’s “Motion to Correct Judgment and Journal Entry to Comply with Criminal Rule 32(C)” is best considered a request for the trial court to reconsider its final judgment by entering a finding of guilt. A judgment entered on a motion for reconsideration after final judgment, however, is a nullity. *State v. Myers*, 9th Dist. No. 08CA0041, 2009-Ohio-2082, at ¶9.

{¶6} The trial court’s May 21, 2008, sentencing entry is vacated, with the effect that the parties are returned to the same position they would have been in absent that order. See, generally, *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, at ¶22 (describing the effect of vacating an order of the trial court that is a nullity). See, also, App.R. 4(A).

Judgment vacated.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

LYNN C. SLABY
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR

(Slaby, J., retired, of the Ninth District Court of Appeals, sitting by assignment pursuant to §6(C), Article IV, Constitution.)

APPEARANCES:

JOHN R. KASSINGER, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.