

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 28487

Appellee

v.

DELARRIN H. MOORE

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 2016 06 0805

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 29, 2017

CALLAHAN, Judge.

{¶1} Defendant-Appellant, Delarrin Moore, appeals from the judgment of the Summit County Court of Common Pleas, denying his motion to suppress. This Court dismisses the appeal for lack of jurisdiction.

I.

{¶2} A grand jury indicted Mr. Moore on one count of aggravated possession and one count of minor misdemeanor possession. Mr. Moore filed a motion to suppress and, following a hearing, the court denied his motion. He then entered into a written plea agreement, pursuant to which he agreed to plead no contest. The court accepted his plea and sentenced him to one year of community control. In journalizing his judgment of conviction, however, the court wrote that Mr. Moore had pleaded guilty.

{¶3} The court later issued a nunc pro tunc entry in which it clarified that Mr. Moore had pleaded no contest. Mr. Moore then appealed from the court's nunc pro tunc entry, but, in

his docketing statement, expressed his intention to challenge the court's suppression ruling. This Court concluded that it lacked jurisdiction to hear the appeal because Mr. Moore was attempting to appeal from his underlying judgment of conviction rather than the nunc pro tunc entry. *See State v. Moore*, 9th Dist. Summit No. 28369 (Sept. 26, 2016). This Court noted that a nunc pro tunc entry relates back in time to the date of the entry it corrects, so it does not extend the time within which a defendant must file an appeal from his original judgment of conviction. *Id.* Because Mr. Moore had appealed strictly from the nunc pro tunc entry and his time for appealing his original judgment of conviction had passed, this Court dismissed the appeal. In doing so, this Court noted that Mr. Moore "[was] not precluded * * * from filing a new appeal along with a motion for delayed appeal from the [original] judgment of conviction." *Id.*

{¶4} Subsequently, Mr. Moore filed another notice of appeal along with a motion for delayed appeal. He appended to his notice of appeal the court's nunc pro tunc entry, but failed to reference a specific judgment entry in either his written notice or his motion. Because neither item specified which judgment he sought to appeal, the magistrate ordered Mr. Moore to file a corrected notice of appeal. *See State v. Moore*, 9th Dist. Summit No. 28487 (Jan. 17, 2017). In doing so, the magistrate noted that this Court had previously dismissed Mr. Moore's attempt to appeal the nunc pro tunc entry because his appeal did not actually stem from the correction the court made therein. The magistrate ordered Mr. Moore to respond by designating the specific order from which he was appealing.

{¶5} When Mr. Moore responded to the magistrate's order, he indicated that it was his intention to appeal "the nunc pro tunc order dated August 18, 2016." This Court then issued a journal entry, summarizing Mr. Moore's intention to appeal from the nunc pro tunc entry because "the change made in that entry affected a substantial right." *State v. Moore*, 9th Dist.

Summit No. 28487 (Feb. 10, 2017). This Court provisionally granted his motion for delayed appeal, but noted that it might revisit that determination upon final disposition.

{¶6} Mr. Moore's appeal is now before this Court and raises one assignment of error for review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN REFUSING TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE.

{¶7} In his sole assignment of error, Mr. Moore argues that the trial court erred by denying his motion to suppress. Accordingly, he once again attempts to challenge his underlying judgment of conviction rather than the court's nunc pro tunc entry. This Court, however, only granted Mr. Moore's motion to appeal from the latter entry. As this Court previously noted,

a nunc pro tunc order does not extend the time within which an appeal may be filed from the substance of the initial entry. *See Perfection Stove Co. v. Scherer*, 120 Ohio St. 445, 448-449 (1929). Instead, any appeal from a nunc entry is limited to the rights created or denied by the later correction. *See Daniels-Rodgers v. Rodgers*, 10th Dist. Franklin No. 15AP-202, 2015-Ohio-1974, ¶ 16.

State v. Moore, 9th Dist. Summit No. 28369 (Sept. 26, 2016). This Court only granted Mr. Moore's motion for delayed appeal to the extent he expressed his intention to appeal from the court's nunc pro tunc entry. His argument, however, turns on the court's suppression ruling, not the correction it made in its nunc pro tunc entry. Because Mr. Moore has not filed a timely appeal from his original judgment of conviction or a motion for delayed appeal from the same, this Court lacks jurisdiction to consider his attempted appeal. *See App.R. 4(A)*. As such, this Court does not address the merits of Mr. Moore's assignment of error.

III.

{¶8} Upon review, this Court lacks jurisdiction to consider Mr. Moore's attempted appeal. As such, the appeal is dismissed.

Appeal dismissed.

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(C). 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 Appellant.

LYNNE S. CALLAHAN
FOR THE COURT

HENSAL, P. J.
TEODOSIO, J.
CONCUR.

APPEARANCES:

GREGORY A. PRICE, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.