[Cite as *State v. Dumas*, 2002-Ohio-7298.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	CASE NO. 98 CA 167
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	OPINION AND
	)	JOURNAL ENTRY
NATHANIEL DUMAS, III	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS: Appellee's Motion for Stay and Request for Reconsideration
Case No. 97-CR-998

JUDGMENT: Overruled.

APPEARANCES:

For Plaintiff-Appellee:

Atty. Paul J. Gains
Mahoning County Prosecutor
Atty. Janice T. O'Halloran
Assistant Prosecuting Attorney
Mahoning County Courthouse
120 Market Street
Youngstown, Ohio 44503

For Defendant-Appellant:

Atty. David H. Bodiker
State Public Defender
Atty. Lisa Fields Thompson
Assistant State Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 43215

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: December 23, 2002

PER CURIAM.

{¶1} On November 26, 2002, we released our opinion in this matter. We reversed the conviction and sentence of appellant Nathaniel Dumas and dismissed the charges against him. Appellee, the state of Ohio, filed a request for reconsideration and motion for stay on December 5, 2002. For the following reasons, appellee's request for reconsideration and motion for stay are overruled.

{¶2} Appellee argues that our decision conflicts with our holding in *State v. Gales* (1999), 131 Ohio App.3d 56, 721 N.E.2d 497. We disagree. As discussed in our November 26, 2002, opinion, *Gales* deals with whether a trial judge must make further inquiries when a criminal defendant protests his or her innocence after the court has accepted a guilty plea. In the instant case, we found that Appellant's guilty plea had not yet been accepted by the trial court. There is no journal entry signifying that the court accepted Appellant's guilty plea. It is axiomatic in Ohio that a court speaks through its journal. *State v. King* (1994), 70 Ohio St.3d 158, 162, 637 N.E.2d 903. Based on the record before us, we concluded that this case was not governed by *Gales*, but by the requirements of *North Carolina v. Alford* (1971), 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162, and *State v. Piacella* (1971), 27 Ohio St.2d 92, 56 O.O.2d 52, 271 N.E.2d 852. Appellee has not presented us with any reason for altering our conclusion.

{¶3} Appellee also questions the basis for our conclusion that the prosecutor would only have had an incentive to seek a longer prison term if the case had been remanded for further proceedings. Although it seems rather obvious that a prosecutor would not go to trouble and expense of prosecuting a case merely as an academic exercise, our comments in this regard were not the fundamental basis for our decision to dismiss the charges. Our decision was based on the inequity of exposing Appellant, through no fault of his own, to the significant risk of a longer term of imprisonment after having already served his entire prison term.

{¶4} We do not find appellee's arguments persuasive, and we hereby overrule the request for reconsideration and motion for stay.

Vukovich, P.J., Waite and Donofrio, JJ., concur.