

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-09-1301

Appellee

Trial Court No. CR0200501876

v.

Michael Ewing

DECISION AND JUDGMENT

Appellant

Decided: September 30, 2010

* * * * *

Michael Ewing, pro se appellant.

* * * * *

HANDWORK, J.

{¶ 1} Appellant, Michael Ewing, appeals a judgment of the Lucas County Court of Common Pleas denying his motion to correct his judgment entry on sentencing.

Appellant asks this court to consider the following assignment of error:

{¶ 2} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT WHEN OVERRULING HIS MOTION TO CORRECT JUDGMENT ENTRY WHERE IT HAD A OBLIGATION TO DO SO."

{¶ 3} On September 28, 2005, appellant was sentenced to four years of community control on his conviction for attempted felonious assault, a violation of R.C. 2923.02 and 2903.11 (A)(1). Subsequently, however, appellant violated one of the conditions of his community control. Therefore, on May 15, 2007, the trial court sentenced him to four years in prison, "to be served consecutively to CR07-1121 for a total time of five years and five months."

{¶ 4} On July 9, 2008, the Supreme Court of Ohio decided *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. In *Baker*, at the syllabus, the court held:

{¶ 5} "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. (Crim.R.32(C), explained.)"

{¶ 6} Based upon the holding in *Baker*, appellant filed a motion to correct the trial court's September 2008 judgment entry in order to render it a final, appealable order. Appellant asserted that the judgment failed to comply with *Baker* in that it did not provide the "manner of his conviction," that is, whether appellant entered a guilty plea, or was found guilty by a jury or the court. On October 14, 2009, the court below

journalized a judgment entry denying appellant's motion to correct the judgment entry on sentencing. This appeal followed.

{¶ 7} This court recently determined that, in light of the *Baker* case, the appropriate legal avenue of relief seeking to correct a judgment entry on sentencing that does not comply with *Baker* is mandamus, not a direct appeal. See *State v. Notestine*, 6th Dist. No. OT-10-015, 2010-Ohio-4167, ¶ 13. Accordingly, appellant's appeal is dismissed, and Ewing is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

APPEAL DISMISSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.