

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

State of Ohio,	:	Case No. 18CA3
Plaintiff-Appellee	:	
v.	:	<u>ENTRY</u>
Shawn Blackburn,	:	
Defendant-Appellant.	:	RELEASED: 01/28/2019

Abele, A.J.

{¶1} Appellant Shawn Blackburn filed a motion to stay proceedings and for a remand to the trial court for the issuance of a sentencing entry that is a final appealable order. Blackburn contends that the entry is not final because it does not address a sentencing-enhancing specification. However, the Supreme Court of Ohio has held that an otherwise complete sentencing entry is a final appealable order even if it does not address a sentencing-enhancing specification. Any errors in sentencing-enhancing specifications can be adequately addressed on appeal. We find that the sentencing entry is a final appealable order and complies with Crim.R. 32(C). We **DENY** Blackburn’s motion.

Legal Analysis

{¶2} 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, ¶ 5, quoting *State v. Marcum*, 4th Dist. Hocking Nos. 11CA8 and 11CA10, 2012-Ohio-572, ¶ 6.

{¶3} 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*, 151 Ohio St.3d 239, 2017-Ohio-7469, 87 N.E.3d 122, ¶ 11 citing *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶ 14. 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, nolle 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.

{¶4} In *Cole, infra*, we found that a judgment of conviction that did not address a sentencing-enhancing firearm specification was not a final, appealable order. *State v. Cole*, 4th Dist. Pickaway No. 09CA16, 2010-Ohio-4774, ¶ 7. However, several years after *Cole* was decided, the Supreme Court of Ohio held that a sentencing entry that was otherwise complete but failed to dispose of the sentencing-enhancing firearm specification was a final appealable order and complied with Crim.R. 32(C). See *State ex rel. Jones v. Ansted*, 131 Ohio St.3d 125, 2012-Ohio-109, 961 N.E.2d 192, ¶ 1-2 (because the firearm specification was “merely a sentence enhancement, not a separate criminal offense” the trial court’s failure to address the sentencing-enhancing specification did not affect the finality of the entry and any error could be addressed on

appeal). Since *Ansted*, other appellate districts have determined that a trial court's failure to address sentencing-enhancing specifications does not render the entry a non-final, non-appealable order. See *State ex rel. Smith v. Krueger*, 5th Dist. Delaware No. 17CAD110073, 2018-Ohio-659, ¶ 14, citing *State ex rel. Carter v. Saffold*, 8th Dist. Cuyahoga No. 100322, 2013-Ohio-5596, ¶ 5; *State v. Clark*, 8th Dist. Cuyahoga No. 101449, 2014-Ohio-5693, ¶ 11-12 ("the failure to address and sentence with regard to any specifications does not render a sentencing entry a non-final, non-appealable order. The failure of a trial court to address a specification constitutes a sentencing error that must be addressed upon appeal.").

{¶5} Here Blackburn was indicted for one count of rape that included a sexually violent predator specification, two counts of gross sexual imposition, two counts of kidnapping, one count of obstructing justice and one count of obstructing official business. The jury found him guilty of all but one count of kidnapping. The trial court's sentencing entry sets forth (1) the fact of the convictions, (2) the sentences, (3) the judge's signature, and (4) the time stamp indicating entry upon the journal. However, it does not address the sexually violent predator specification.

{¶6} A sexually violated predator specification is a sentencing enhancer, not a separate criminal offense:

The Ohio Supreme Court has stated that, "a specification is, by its very nature, ancillary to, and completely dependent upon, the existence of the underlying criminal charge or charges to which the specification is attached." *State v. Nagel*, 84 Ohio St.3d 280, 286, 1999-Ohio-507. Additionally, that court has previously referred to specifications as penalty enhancers, rather than separate violations or offenses. *State v. Evans*, 113 Ohio St.3d 100, citing *State v. Foster*, supra, at-71. Therefore, a sexually violent predator specification is not a separate criminal offense, it is a sentencing enhancement that must be properly stated in the indictment as part of the underlying charge.

State v. Bruce, 8th Dist. Cuyahoga No. 90897, 2009-Ohio-1067, ¶ 31, *aff'd*, 123 Ohio St.3d 464, 2009-Ohio-6090, 917 N.E.2d 802 (2009). Therefore, under *Ansted*, *supra*, the sentencing entry is a final appealable order. Any errors the trial court made in addressing the sexually violent predator specification can be addressed on appeal.

{¶7} The court's sentencing entry is a final, appealable order. **MOTION DENIED.**

{¶8} 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. **IT IS SO ORDERED.**

Harsha, J. & Hoover, J.: Concur.

FOR THE COURT

Peter B. Abele
Administrative Judge