

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

DASHAWN E. WILLIAMSON

Defendant-Appellant

Appellate Case No. 27147

Trial Court Case No. 2015 CR 02941

(Criminal Appeal from
Common Pleas Court)

DECISION AND ENTRY

August 30, 2016

PER CURIAM:

{¶ 1} This matter is before the court on the State of Ohio's motion to dismiss. For the following reasons, we overrule the motion and allow the appeal to proceed.

{¶ 2} Dashawn Williamson was convicted by a jury on May 27, 2016. According to the filings and notes on the docket, the trial court orally sentenced Williamson on June 13, 2016. The same day, at 8:36 p.m., Williamson filed a notice of appeal. The trial court journalized a Termination Entry setting forth the conviction and sentence a week later, on June 20, 2016.

{¶ 3} The State moved to dismiss Williamson’s appeal for lack of a final appealable order. The State first argues that Williamson has attempted to appeal the May 27, 2016 verdict entry in the underlying case, which is not a final appealable order. This argument is not well-taken here. While a verdict entry would not be a final appealable order (*State v. Garrett*, 2d Dist. Montgomery No. 27057, Decision and Final Judgment Entry (July 14, 2016)), the notice of appeal in this case does not designate the verdict entry as the order on appeal. The notice designates the “final judgment and Sentence of the Montgomery County Court of Common Pleas on June 13, 2016.”

{¶ 4} The State notes that the notice of appeal was filed prior to the June 20, 2016 Termination Entry, which is a final judgment. It argues that the trial court was divested of jurisdiction to enter the final judgment when Williamson filed his notice of appeal on June 13, 2016. See *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, 129 Ohio St.3d 30, 2011-Ohio-626, 950 N.E.2d 149, ¶ 13 (“once an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court’s jurisdiction to reverse, modify, or affirm the judgment”) (internal citation and quotation omitted). Williamson did not file a response to the motion to dismiss.¹

{¶ 5} We conclude that this issue is governed by App.R. 4(C) concerning premature notices of appeal. The rule provides that a “notice of appeal filed after the announcement of a decision, order, or sentence but before entry of the judgment or order that begins the running of the appeal time period is treated as filed immediately after the entry.” It “addresses situations where a notice of appeal is filed in between a trial court’s

¹ New counsel filed a second notice of appeal in the underlying case on July 19, 2016. See Montgomery Appellate Case No. 27189. Although the State addresses the matters together, we will resolve that appeal by separate order.

announcement of its decision, and the written judgment entry journalizing that decision.” *Brown v. Potter*, 2d Dist. Montgomery No. 26774, 2015-Ohio-4289, ¶ 4. Here, it appears that the notice of appeal was filed the evening after the announcement of Williamson’s sentence in court on June 13, 2016, but before the Termination Entry that started his appeal time. According to the rule, the premature notice of appeal is treated as filed immediately after the June 20, 2016 Termination Entry.

{¶ 6} A “premature notice of appeal under App.R. 4(C) does not divest the trial court of jurisdiction to proceed because the appeal has not yet been perfected.” *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516, ¶ 14. The trial court here was not divested of jurisdiction to enter the Termination Entry. We therefore **OVERRULE** the State’s motion to dismiss this appeal. The matter will proceed in accordance with the Rules of Appellate Procedure from the June 20, 2016 Termination Entry. Williamson shall cause completion of the record within 14 days of the journalization of this Decision and Entry.

SO ORDERED.

JEFFREY E. FROELICH, Judge

MICHAEL T. HALL, Judge

Copies to:

Jimmie Christon
131 N. Ludlow Street, Suite 212
Dayton, Ohio 45402
Attorney for Appellant

Megan Woodall

301 W. Third Street, 5th Floor
Dayton, Ohio 45422
Attorney for Appellee

Hon. Timothy N. O'Connell
Montgomery County Common Pleas Court
41 N. Perry Street
P.O. Box 972
Dayton, Ohio 45422

Courtesy copy to:

Christopher Deal
2451 Shiloh Springs Road
Dayton, Ohio 45426
Attorney for Appellant in Case No. 27189

CA3/KY