

[Cite as *State v. Boswell*, 2009-Ohio-3135.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JERRY M. BOSWELL

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. Patricia A. Delaney, J.

Case No. 2009CA0024

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2007CR0856

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

June 25, 2009

APPEARANCES:

For Plaintiff-Appellee

KIRSTEN L. PSCHOLKA-GARTNER
38 South Park Street
Mansfield, OH 44902

For Defendant-Appellant

DALE M. MUSILLI
105 Sturges Avenue
Mansfield, OH 44903

Farmer P.J.

{¶1} On November 7, 2007, the Richland County Grand Jury indicted appellant, Jerry Boswell, on one count of aggravated burglary in violation of R.C. 2911.11. A jury trial commenced on March 17, 2008. The jury found appellant guilty as charged. By sentencing entry filed March 18, 2008, the trial court sentenced appellant to five years in prison.

{¶2} On June 11, 2008, appellant filed a notice of appeal of the March 18, 2008 sentencing entry (Case No. 08-CA-54). On February 11, 2009, the trial court filed an amended sentencing entry to comply with *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330.

{¶3} On February 12, 2009, this court dismissed the appeal for lack of a final appealable order because the March 18, 2008 sentencing entry did not comply with *Baker*.

{¶4} On February 27, 2009, appellant filed a notice of appeal of the February 11, 2009 amended sentencing entry (Case No. 09-CA-24). This matter is now before this court for consideration. Assignment of error is as follows:

I

{¶5} "THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO DISMISS ON SPEEDY TRIAL GROUNDS."

I

{¶6} A review of the procedural aspects of this case is warranted.

{¶7} By sentencing entry filed March 18, 2008, the trial court sentenced appellant to five years in prison. On June 11, 2008, appellant filed a notice of appeal

(Case No. 08-CA-54). On February 11, 2009, the trial court filed an amended sentencing entry to comply with *Baker*, supra. While we applaud the trial court for taking the initiative to comply with *Baker*, the trial court did not have jurisdiction to file the amended sentencing entry as the case was already before this court via appellant's June 11, 2008 appeal. *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas* (1978), 55 Ohio St.2d 94. The trial court did not have jurisdiction until February 12, 2009 when this court dismissed the appeal.

{¶8} As per this court's February 12, 2009 judgment entry dismissing the appeal, the March 18, 2008 is not a final appealable order, and as we find herein, the February 11, 2009 amended sentencing entry is void for lack of jurisdiction. Therefore, there is no final appealable order before this court.

{¶9} The appeal is dismissed.

By Farmer, P.J.

Gwin, J. and

Delaney, J. concur.

s/SHEILA G. FARMER

s/W. SCOTT GWIN

s/PATRICIA A. DELANEY

JUDGES

SGF/db 0611

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

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Plaintiff-Appellee

-vs-

JERRY M. BOSWELL

Defendant-Appellant

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JUDGMENT ENTRY

CASE NO. 2009CA0024

For the reasons stated in our accompanying Memorandum-Opinion, this appeal is dismissed.

s/SHEILA G. FARMER

s/W. SCOTT GWIN

s/PATRICIA A. DELANEY

JUDGES