

[Cite as *State v. Loyer*, 2010-Ohio-1181.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P. J.
	:	Hon. John W. Wise, J.
Plaintiff-Appellee	:	Hon. Patricia A. Delaney, J.
	:	
-vs-	:	
	:	Case No. 2009-CA-00312
ANTHONY J. LOYER	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Stark County Court of Common Pleas, Case No. 2002CR0480

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: March 22, 2010

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Gwin, P. J.,

{¶1} Defendant-appellant Anthony Loyer appeals a judgment of the Court of Common Pleas of Stark County, Ohio, which overruled his motion to vacate its prior sentencing order, entered November 1, 2002. Appellant assigns a single error to the trial court:

{¶2} “THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT’S MOTION TO VACATE A VOID SENTENCING ENTRY WHERE SAID ENTRY FAILED TO COMPLY WITH CRIMINAL RULE 32 WHERE THE MANNER AND MEANS OF CONVICTION WERE NOT SET FORTH IN THE JUDGMENT ENTRY.”

{¶3} Appellant was convicted of aggravated murder in violation of R.C. 2903.01, after a jury trial. The trial court sentenced appellant to life in prison with eligibility for parole after twenty years, and after a three year firearm specification sentence. This court affirmed the trial court’s decision in *State v. Loyer*, Stark App. No. 2002-CA-00397, 2003-Ohio-4041.

{¶4} In 2008, appellant filed a motion to vacate his sentence with the trial court, arguing at the time of the original sentencing the trial court failed to inform him of his obligation to pay court costs. The court overruled the motion, and this court affirmed. *State v. Loyer*, Stark App. No. 2008-CA-00058, 2008-Ohio- 5570.

{¶5} In December 2009, appellant filed the motion which is the subject of the present appeal. Appellant’s motion asked the court to vacate his original sentence for failure to comply with Crim. R. 32 (C), as required by the holding in *State v. Baker*, 119 Ohio St. 3d 197, 2008-Ohio-3330, 893 N.E. 2d 163. The trial court overruled the motion and this appeal ensued.

{¶16} Appellant argues *Baker* requires the trial court to set forth the plea, jury verdict, or finding of the court upon which the conviction is based. The trial court's sentencing entry states he had been found guilty of the count charged in the indictment, but does not state the conviction was the result of a jury verdict.

{¶17} We find the Rule set forth in *Baker*, supra, does not apply here. *Baker* does not apply retroactively to a case in which the direct appeal became final prior to the date *Baker* was decided. A new interpretation of a rule or statute by the Ohio Supreme Court is generally applied to cases that are pending at that time, but is not applied to cases that have already completed the direct appeal process. *State v. Evans* (1972), 32 Ohio St. 2d 185, 291 N.E. 2d 466; *State v. Lynn* (1966), 5 Ohio St. 2d 106, 214 N.E. 2d 226. We affirmed this conviction and sentence in 2003, and again reviewed and affirmed the sentence in 2008.

{¶18} The assignment of error is overruled.

{¶19} For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed.

By Gwin, P. J.,

Wise, J., and

Delaney, J., concur

HON. W. SCOTT GWIN

HON. JOHN W. WISE

HON. PATRICIA A. DELANEY

