[Cite as *State v. Notestine*, 2010-Ohio-4167.]

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

State of Ohio — Court of Appeals No. OT-10-015

Appellee — Trial Court No. 07CR156

v.

Dale E. Notestine — **DECISION AND JUDGMENT**

Appellant — Decided: September 3, 2010

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney,
and Matthew S. Schuh, Assistant Prosecuting Attorney, for appellee.

Dale E. Notestine, pro se.

* * * * *

SINGER, J.

{¶ 1} Appellant, Dale E. Notestine, appeals from a judgment of the Ottawa County Court of Common Pleas, denying his "motion to correct status of void sentencing entry." Based on recent case law from the Supreme Court of Ohio, we hereby dismiss appellant's appeal.

{¶ 2} On May 2, 2008, appellant was convicted of four counts of rape, seven counts of unlawful sexual conduct with a minor, twelve counts of corrupting another with drugs, one count of disseminating a matter harmful to juveniles, two counts of possession of drugs, and one count of possession of drug paraphernalia. The trial court found appellant to be Tier III sex offender, and sentenced him to serve more than 40 years in prison. He timely appealed to this court.

{¶ 3} On June 3, 2009, while appellant's appeal was still pending, this court sua sponte remanded the case back to the trial court pursuant to *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, which states:

{¶ 4} "[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 findings 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.)"

{¶ 5} The court in *Baker* further holds that "only one document can constitute a final appealable order." Id. at ¶ 17. Therefore, the finding of guilt or the guilty plea must be in the same document as the sentence.

{¶ 6} In the instant case, the June 13, 2008 judgment entry of sentencing set forth defendant's sentence, was signed by the judge and was entered on the journal by the clerk. However, it did not state that the defendant was found guilty by the court, it merely stated:

{¶ 7} "The court finds that the defendant has been convicted of four counts of rape * * *."

{¶ 8} In response to this court's remand, the trial court, on June 11, 2009, filed a "sentencing judgment entry nunc pro tunc." The judgment entry was virtually identical to the one issued previously except that the June 11, 2009 judgment entry specifically states that "[D]efendant was found guilty by the court after a trial to the court" and "[T]he court having found the defendant guilty of * * *."

{¶ 9} Thereafter, this court, on June 18, 2009, reinstated the case to its docket. On June 30, 2009, this court affirmed appellant's convictions. *State v. Notestine,* 6th Dist. No. OT-08-038, 2009 -Ohio- 3220.

{¶ 10} On March 9, 2010, appellant filed, with the trial court, a "motion to correct status of void sentencing entry." Appellant argued that a nunc pro tunc was not the proper remedy to correct his original judgment entry. Appellant's motion was denied on March 22, 2010. Appellant now appeals and sets forth the following assignment of error:

{¶ 11} "The trial court committed error and acted contrary to clearly established law in ruling that Crim.R. 36 permitted the trial court to issue a nunc pro tunc sentencing entry, when such entry did not constitute the mere correction of a clerical mistake or an oversight as contemplated under Crim.R. 36."

{¶ 12} In his sole assignment of error, appellant contends that the court used a nunc pro tunc entry to change a substantive issue in his case as opposed to merely correcting a clerical error.

{¶ 13} Appellant has chosen the wrong legal avenue of relief. Mandamus, not direct appeal, is the appropriate action by which to obtain the type of relief appellant seeks. See *State ex rel. Culgan v. Medina Cty. Court of Common Pleas*, 119 Ohio St.3d 535, 2008-Ohio-4609, *State ex rel. Carnail v. McCormick*, ___ Ohio St.3d ___, Slip Opinion No. 2010-Ohio-2671. Accordingly, we hereby dismiss appellant's appeal.

{¶ 14} The court orders this appeal dismissed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

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.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE