

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

State of Ohio

Court of Appeals No. WD-10-022

Appellee

Trial Court No. 2005CR0012

v.

Jeffrey Thomas

DECISION AND JUDGMENT

Appellant

Decided: December 30, 2010

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney,
Gwen Howe-Gebers, Chief Assistant Prosecuting Attorney,
and David E. Romaker Jr., Assistant Prosecuting Attorney,
for appellee.

Jeffrey Thomas, pro se.

* * * * *

SINGER, J.

{¶ 1} Appellant was found guilty by a jury of one count of rape and one count of gross sexual imposition. He was sentenced to a total term of nine years incarceration, ordered to pay a fine of \$10,000, and was classified as a sexually oriented offender. This court affirmed his convictions on direct appeal. *State v. Thomas*, 6th Dist. No. WD-06-014, 2007-Ohio-3466.

{¶ 2} On March 30, 2010, the trial court held a hearing on appellant's motion seeking to correct his void sentence. On this occasion, he was resentenced to serve seven years for rape and two years for gross sexual imposition. The sentences were ordered served concurrently for a total of seven years. Appellant appealed his resentencing.

{¶ 3} On May 13, 2010, while appellant's appeal was still pending, this court sua sponte remanded the case back to the trial court for 20 days 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} On May 24, 2010, the trial court issued a judgment entry specifically stating that a jury found appellant guilty of rape and guilty of gross sexual imposition. Accordingly, this court reinstated appellant's appeal. Appellant now asserts one assignment of error:

{¶ 7} "The trial court erred by failing to inform appellant of his appellate rights as required by Crim.R. 32(B)(3)(a)(b)(c) and (d)."

{¶ 8} Appellant contends that the trial court erred in resentencing him, in that the trial court failed to inform him of his right to appeal pursuant to Crim.R. 32(B)(3) which states:

{¶ 9} "If a right to appeal or a right to seek leave to appeal applies under division (B)(1) or (B)(2) of this rule, the court also shall advise the defendant of all of the following:

{¶ 10} "(a) That if the defendant is unable to pay the cost of an appeal, the defendant has the right to appeal without payment;

{¶ 11} "(b) That if the defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost;

{¶ 12} "(c) That if the defendant is unable to pay the costs of documents necessary to an appeal, the documents will be provided without cost;

{¶ 13} "(d) That the defendant has a right to have a notice of appeal timely filed on his or her behalf."

{¶ 14} At his resentencing, the trial judge stated: "[I] have to inform you that you do have 30 days to appeal the sentence of this court. So that does give you an opportunity to have the appellate court review this whole thing again."

{¶ 15} In support of his assignment of error, appellant cites *State v. Hunter*, 8th Dist. No. 92626, 2010-Ohio-657, wherein the Eighth District Court of Appeals reversed Hunter's resentencing because the trial court failed to inform him of his Crim.R. 32 appeal rights. The facts in *Hunter*, however, are different from the instant case. Here,

while the trial court did not recite all of the components of Crim.R. 32(B)(3), the trial court at least told appellant he had the right to appeal. In *Hunter*, the trial judge made no mention of the appellant's appeal rights. "* * * the record is devoid of any mention of [appellant's] appellate rights." *Id.*

{¶ 16} We find this court's decision in *State v. Gagnon*, 6th Dist. No. L-08-1235, 2009-Ohio-5185, to be more relevant. Much like the instant case, Gagnon was advised at sentencing as follows: "[D]efendant is, again, reminded of the limited right to appeal the plea, as well as his right to appeal the sentence under certain circumstances as provided for in 2953.08." Gagnon argued that the trial court erred by failing to notify him of his right to appeal pursuant to Crim.R. 32(B)(2). In rejecting his argument, this court stated:

{¶ 17} "[A]lthough the trial court did not adhere to the letter of Crim.R. 32(B), appellant was advised of his appellate rights after sentencing. Any error in this instance is harmless in that appellant timely filed his notice of appeal to this court. Finding no prejudice to appellant, his sixth assignment of error is found not well-taken."

{¶ 18} Applying the same reasoning to this case, appellant's sole assignment of error is found not well-taken.

{¶ 19} The judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.