

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

State of Ohio, ex rel. Daniel A. Elkins

Court of Appeals No. S-11-008

Relator

v.

Sandusky County Court of Common Pleas
and Judge Barbara J. Ansted

DECISION AND JUDGMENT

Respondents

Decided: April 19, 2011

* * * * *

Daniel A. Elkins, pro se.

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney,
and Norman P. Solze, Assistant Prosecuting Attorney, for
respondents.

* * * * *

SINGER, J.

{¶ 1} Relator, Daniel A. Elkins, has filed a petition for writs of mandamus/
procedendo against respondents, Judge Barbara J. Ansted and the Sandusky County
Court of Common Pleas. In the petition, relator requests that this court order respondent

Ansted to issue a judgment entry which is a final, appealable order, in Sandusky County Court of Common Pleas case No. 08 CR 203. Relator alleges that in its sentencing judgment entry issued on May 13, 2008, the court failed to dispose of firearm specifications pertaining to Counts 1, 2, and 3 in that case. Relator further alleges that the court has failed to rule on a pending motion, filed on May 3, 2010, requesting that the court issue a final judgment entry.

{¶ 2} On January 7, 2011, in response to relator's motion, respondent issued a nunc pro tunc judgment entry, which purported to correct the prior sentencing judgment entry. On February 16, 2011, respondent filed a motion to dismiss in the instant case, contending that she had ruled on all of relator's pending motions and had issued the nunc pro tunc entry to correct the clerical error that the firearm specifications had, in fact, been dismissed. Since respondent prematurely filed the motion to dismiss, we will proceed as if an alternative writ had been issued by this court.

{¶ 3} Relator opposes the motion to dismiss, stating that the nunc pro tunc judgment does not meet the requirements of Crim.R. 32(C). Relator further states that his "time to file a meaningful appeal of right will not begin to run until there is a valid final appealable order issued * * *."

{¶ 4} To be entitled to the issuance of a writ of mandamus, relator must demonstrate: (1) a clear legal right to the relief prayed for, (2) a clear legal duty on the respondent's part to perform the act, and (3) that there exists no plain and adequate

remedy in the ordinary course of law. *State ex rel. Master v. Cleveland* (1996), 75 Ohio St.3d 23, 26-27; *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St.2d 41.

{¶ 5} A judgment of conviction is a single document that must include: "(1) the guilty plea, jury verdict, or finding 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." *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, syllabus, ¶ 17. A nunc pro tunc judgment entry is issued as a correction and *replacement for the entire original judgment entry*.

{¶ 6} Respondent, acknowledging that the initial judgment entry was incorrect, issued the January 7, 2011 "nunc pro tunc" judgment entry. Nevertheless, that entry still does not comply with Crim.R. 32(C), in that it does not replace the original with a complete, corrected judgment. Instead, the second judgment merely references the omission of the dismissal of the firearm specifications in the prior judgment entry and states that "the remainder of the judgment entry dated May 13th, 2008 and filed stamped May 13th, 2008, shall remain in full force and effect." In other words, relator's judgment of conviction and sentence is divided between two judgment entries. Relator is entitled to a single document which comports with Crim.R. 32(C) and the *Baker* requirements. Therefore, respondent's motion to dismiss is not well-taken and is denied.

{¶ 7} Respondent has acknowledged that the original judgment entry did not comply with Crim.R. 32(C) and we have determined that the nunc pro tunc judgment issued also does not comply. We conclude, therefore, that relator has demonstrated all

the necessary elements entitling him to the issuance of a writ of mandamus. We further note, however, that appellant previously appealed his original conviction and sentence, which this court affirmed. See *State v. Elkins*, 6th Dist. No. S-08-014, 2009-Ohio-2602. Therefore, once respondent issues the single document nunc pro tunc judgment entry, appellant's right to appeal is limited to only the issue which is the subject of correction. See *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238. He may not relitigate the merits of his entire case or previous appeal. See *State v. Triplett*, 6th Dist. No L-10-1158, 2011-Ohio-____.

{¶ 8} Accordingly, pursuant to R.C. 2731.06, and because it is apparent that no valid excuse can be given by respondent for not issuing a proper nunc pro tunc judgment entry which includes appellant's conviction and sentence in a single document, this court issues a peremptory writ of mandamus and orders that respondent issue a judgment entry in compliance with Crim.R. 32(C) and *Baker*, supra. Relator's complaint in procedendo is moot.

{¶ 9} To the clerk: Manner of service.

{¶ 10} The clerk of court, whom the court hereby specially authorizes to perfect service in this case, shall immediately serve, upon the respondent, Judge Barbara Ansted, by personal service, a copy of this alternative writ pursuant to R.C. 2731.08, and the clerk shall verify, by affidavit, the time, place, and manner of service and file such verification upon the completion of the service.

{¶ 11} The clerk is further directed to immediately serve **upon all other parties** a copy of this peremptory writ in a manner prescribed by Civ.R. 5(B).

{¶ 12} It is so ordered.

PETITION GRANTED.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

Stephen A. Yarbrough, J.
CONCURS IN JUDGMENT ONLY.

JUDGE

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