

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

State ex rel. Charles V. Jones

Court of Appeals No. L-11-1108

Relator

v.

Lucas County Court of Common Pleas

DECISION AND JUDGMENT

Respondent

Decided: December 28, 2011

* * * * *

Charles V. Jones, pro se.

Julia R. Bates, Lucas County Prosecuting Attorney, and
John A. Borell, Assistant Prosecuting Attorney, for respondent.

* * * * *

SINGER, J.

{¶ 1} Relator, Charles V. Jones, filed a petition for writ of mandamus/procedendo on May 11, 2011, against respondent, Lucas County Court of Common Pleas, alleging that relator never received a sentencing decision in compliance with Crim.R. 32(C) and *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. Relator states that in November

2010, he filed a postconviction "Motion to Correct Status of Void Sentencing Entry" and that, at the time of the filing of this original action, the court had not yet ruled on that motion. This court issued an alternative writ on August 1, 2011. On October 12, 2011, respondent filed a motion to dismiss, pursuant to 6th Dist.Loc.App.R. 6 and Civ.R. 12(B)(6). Relator has filed no response to the motion to dismiss.

{¶ 2} To be entitled to a writ of mandamus: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 118-119. A writ of procedendo is merely an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment. *Yee v. Erie County Sheriff's Dept.* (1990), 51 Ohio St.3d 43. Extraordinary relief in procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Watkins v. Eighth Dist. Court of Appeals* (1998), 82 Ohio St.3d 532, 535; *State ex rel. Miley v. Parrott* (1996), 77 Ohio St.3d 64, 65.

{¶ 3} In *State v. Baker*, the Ohio Supreme Court determined that a judgment of conviction is a final, appealable order under R.C. 2505.02 when it sets forth the following four elements: (1) the guilty plea, the jury verdict, or the 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. At the time *Baker* was decided, Crim.R. 32(C) provided: "A judgment of

conviction shall set forth the plea, the verdict or findings, and the sentence. * * * The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk." See id. at ¶ 10.

{¶ 4} A little over two years after *Baker*, the Ohio Supreme Court made an exception to *Baker's* one-document rule when it determined that for aggravated-murder cases subject to R.C. 2929.03(F), the final, appealable order consists of the combination of the judgment entry and the sentencing opinion. *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831, ¶ 17. The court in *Ketterer* distinguished *Baker* as follows:

{¶ 5} "Because R.C. 2929.03(F) requires the court to file a sentencing opinion, *Baker* does not control this case, because *Baker* addressed only noncapital criminal cases, in which a judgment of conviction alone constitutes a final, appealable order. R.C. 2929.03(F) requires that a separate sentencing opinion be filed in addition to the judgment of conviction, and the statute specifies that the court's judgment is not final until the sentencing opinion has been filed. Capital cases, in which an R.C. 2929.03(F) sentencing opinion is necessary, are clear exceptions to *Baker's* 'one document' rule." Id.

{¶ 6} In this case, after relator filed the instant original action, the trial court eventually ruled on and denied relator's motion to issue a new sentencing judgment entry on September 29, 2011. The trial court noted that relator was found guilty of and convicted of capital aggravated murder by a three-judge panel. This verdict was included in one of two judgment entries which the trial court found complied with the requirements of *Baker* and *Ketterer*. Our review of that judgment indicates that the trial

court's ruling was correct and that relator's request in mandamus/procedendo is now moot.

{¶ 7} Accordingly, relator's petition for writ of mandamus is not well-taken and is denied. Costs assessed to relator.

{¶ 8} Pursuant to Civ.R. 58(B), the clerk is directed to serve upon all parties, within three days, a copy of this decision in a manner prescribed by Civ.R. 5(B).

{¶ 9} It is so ordered.

WRIT DENIED.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.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>.