

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

State of Ohio

Court of Appeals No. L-11-1235

Appellee

Trial Court No. CR0200501194

v.

James Munn

DECISION AND JUDGMENT

Appellant

Decided: September 21, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
J. Christopher Anderson, Assistant Prosecuting Attorney,
for appellee.

Patricia Horner, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the September 2, 2011 judgment of the Lucas County Court of Common Pleas, which corrected the court's 2008 judgment convicting and sentencing appellant, James E. Munn to add the manner of conviction. Upon

consideration of the assignments of error, we affirm the decision of the lower court.

Appellant asserts the following single assignment of error on appeal:

THE TRIAL COURT ABUSED ITS DISCRETION IN RE-
SENTENCING DEFENDANT.

{¶ 2} Appellant entered an *Alford* plea to charges of involuntary manslaughter in 2006 and was convicted and sentenced in January 2007. Appellant sought an appeal from this judgment, which was affirmed by this court in 2008.

{¶ 3} On August 23, 2011, appellant filed a pro se motion to correct his sentencing judgment because it did not include the manner of conviction and, therefore, was not a final order pursuant to Crim.R. 32(C) and *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, ¶ 18. The trial court entered a nunc pro tunc judgment on September 2, 2011, correcting the judgment by adding the manner of conviction. Appellant sought an appeal from the nunc pro tunc judgment. While this appeal was pending, the Ohio Supreme Court modified the *Baker* holding in *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, and held at paragraph two of the syllabus that a nunc pro tunc judgment entry correcting a clerical omission under Civ.R. 32(C) is not a new final order from which a new appeal may be taken.

{¶ 4} Therefore, on appeal, appellant's counsel has filed an appellate brief and motion to withdraw as counsel pursuant to the guidelines set forth in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). He mailed a copy of the

brief and motion to appellant and informed him that he had a right to file his own brief, but he did not do so.

{¶ 5} Appellant's counsel states in his motion that he thoroughly reviewed the record in this case and concluded that the trial court did not commit any error prejudicial to appellant. However, in compliance with the requirements of *Anders, supra*, appellant's counsel has submitted a brief in which he presented the above-mentioned possible assignment of error, but concludes it is unsupported by the law. Therefore, he concludes that an appeal would be frivolous. We agree.

{¶ 6} While the initial judgment of conviction and sentencing did not contain the manner of conviction, it was a final, appealable order when it was rendered and the nunc pro tunc judgment merely corrected a clerical error. Therefore, appellant cannot file an appeal from the nunc pro tunc entry as a new final judgment. *State v. Boles*, 6th Dist. No. L-11-1020, 2012-Ohio-385, ¶ 14. Appellant's proposed assignment of error is not well-taken.

{¶ 7} This court has the obligation to fully examine the record in this case to determine whether an appeal would be frivolous. *Anders, supra*, at 744. Our review of the record does not disclose any errors by the trial court which would justify a reversal of the judgment.

{¶ 8} Therefore, we find this appeal to be wholly frivolous. Counsel's request to withdraw as appellate counsel is found well-taken and is hereby granted. Having found that the trial court did not commit error prejudicial to appellant, the judgment of the

Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is hereby ordered to pay the court costs incurred on appeal.

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

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>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.</p>
