

[Cite as *Parma v. Blatnica*, 2005-Ohio-194.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 84661

CITY OF PARMA,	:	
	:	
Plaintiff-Appellee	:	JOURNAL ENTRY
	:	
v.	:	AND
	:	
FRANK V. BLATNICA	:	OPINION
	:	
Defendant-Appellant	:	
	:	

DATE OF ANNOUNCEMENT  
OF DECISION: JANUARY 20, 2005

CHARACTER OF PROCEEDING: Criminal Appeal from  
Parma Municipal Court,  
Case No. 03TRC03490-1-5.

JUDGMENT: DISMISSED.

DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiff-Appellee: Timothy G. Dobeck  
City of Parma Law Director/Prosecutor  
6611 Ridge Road  
Parma, OH 44129

John J. Spellacy, Assistant  
5555 Powers Boulevard  
Parma, OH 44129

For Defendant-Appellant: Philip J. Korey  
The Leader Building, Suite 410  
526 Superior Avenue  
Cleveland, OH 44114

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, Frank V. Blatnica, appeals from a decision of a Parma Municipal Court magistrate that found him guilty of driving under the influence of alcohol and failure to maintain reasonable control. We are unable to reach the merits of this appeal, however, because a magistrate's decision is not a final appealable order.

{¶ 2} Traf.R. 14 governs the role of magistrates in traffic cases and provides for the appointment of magistrates "for the purpose of receiving pleas, determining guilt or innocence, receiving statements in explanation and in mitigation of sentence, and recommending penalty to be imposed." See Traf.R. 14(A). Proceedings before a magistrate, however, must comply with Crim.R. 19(E), which governs the action a court must take upon matters referred to a magistrate. See Traf.R. 14(C).

{¶ 3} Crim.R. 19(E)(3) provides that a magistrate's decision is only effective "when adopted by the court." In this regard, the rule provides, in relevant part:

{¶ 4} "The court may adopt the magistrate's decision and enter judgment if no written objections are filed or the parties have waived the filing of objections in writing or on the record in open court, unless the court determines that there is an error of law or other defect on the face of the magistrate's decision. *No sentence*

*recommended by a magistrate shall be enforced until the court has entered judgment.*" (Emphasis added.)

{¶ 5} In this case, the magistrate completed a municipal court pre-printed judgment entry that contained sections for the entering of pleas, for entering a finding of guilty or no contest and for imposing sentence. Consistent with this entry, the magistrate noted that appellant entered no contest pleas to the driving-under-the-influence and failure-to-maintain-reasonable-control charges and thereafter found appellant guilty of those charges. The magistrate made a notation consistent with attempting to impose a sentence of 180 days in jail, suspending 166 of those days. A fine was imposed for both offenses and appellant was placed on probation. The judgment entry also noted the dismissal of the remaining charges. The magistrate thereafter signed the judgment entry on the line demarcated for the judge's signature.

{¶ 6} Even if we were to construe this judgment entry as the magistrate's decision containing the reception of appellant's pleas and a *recommendation* of sentence in accordance with Traf.R. 14(A), nowhere in the record is there any document bearing the adoption of this decision by the municipal judge, or any other action on the judge's part consistent with Crim.R. 19(E)(3).

{¶ 7} In a criminal case, a judgment of conviction in compliance with Crim.R. 32 is required in order to confer

jurisdiction upon an appellate court. See, generally, *State v. Breedlove* (1988), 46 Ohio App.3d 78. Crim.R. 32(C) provides:

{¶ 8} "A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. 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."

{¶ 9} What we have in this case is merely a decision by a municipal court magistrate that was never acted upon by the municipal judge. It does not qualify as a judgment of conviction capable of appellate review. See *State v. Brock*, 1<sup>st</sup> Dist. No. C-020819, 2003-Ohio-3199, at ¶¶5-7.

{¶ 10} Accordingly, we dismiss this appeal for lack of a final appealable order.

Appeal dismissed.

It is ordered that appellee and appellant equally share costs herein taxed.

It is ordered that a special mandate be sent to the Parma Municipal Court directing said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE  
JUDGE

ANTHONY O. CALABRESE, JR., P.J. AND

MARY EILEEN KILBANE, J., CONCUR

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).