

[Cite as *State v. Anderson*, 2006-Ohio-3905.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 87136

STATE OF OHIO	:	
	:	
Plaintiff-appellee	:	
	:	JOURNAL ENTRY
vs.	:	and
	:	OPINION
GEROME ANDERSON	:	
	:	
Defendant-appellant	:	

DATE OF ANNOUNCEMENT OF DECISION	:	JULY 27, 2006
-------------------------------------	---	---------------

CHARACTER OF PROCEEDING	:	Criminal appeal from Cuyahoga
	:	County Court of Common Pleas
	:	Case No. CR-462509

JUDGMENT	:	DISMISSED.
----------	---	------------

DATE OF JOURNALIZATION	:	
------------------------	---	--

APPEARANCES:

For plaintiff-appellee:	WILLIAM D. MASON Cuyahoga County Prosecutor MARK SCHNEIDER, Assistant Justice Center, Courts Tower 1200 Ontario Street Cleveland, Ohio 44113
-------------------------	---

For defendant-appellant:	DAVID L. DOUGHTEN Attorney at Law 4403 St. Clair Avenue Cleveland, Ohio 44103
--------------------------	--

KENNETH A. ROCCO, J.:

{¶ 1} Defendant-appellant, Gerome Anderson, appeals from a common pleas court judgment convicting and sentencing him for three counts of aggravated robbery with firearms specifications, three counts of robbery with firearms specifications, and one count of drug possession with firearms specifications, pursuant to his guilty plea. He argues that the court erred by rejecting his motion to withdraw his guilty plea before sentencing, and by failing to hold a hearing on this motion.

{¶ 2} The judgment of conviction and sentencing order filed July 14, 2005 bears a marginally legible signature which begins with the letter "P," most likely "Peter," followed by a capital "J." The remainder of the signature is illegible. Obviously, this is not the signature of the sentencing judge, Michael P. Donnelly. Crim.R. 32(C) provides that the judge who presides over the proceedings which culminated in the judgment must sign the judgment. *In re Mitchell* (1994), 93 Ohio App.3d 153, 154 (rubber stamp may not be used in lieu of original signature); see *State v. Ginocchio* (1987), 38 Ohio App.3d 105 (setting forth the form of a final order in a criminal case). Therefore, the judgment entry is not a final appealable order.

Dismissed.

This cause is dismissed.

It is, therefore, considered that said appellee recover of said appellant its costs herein.

It is ordered that a special mandate be sent to 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.

JUDGE  
KENNETH A. ROCCO

JAMES J. SWEENEY, P.J.            CONCURS

CHRISTINE T. McMONAGLE, J. DISSENTS  
(SEE ATTACHED DISSENTING OPINION)

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).

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 87136

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee	:	D I S S E N T I N G
	:	
v.	:	O P I N I O N
	:	
GEROME ANDERSON,	:	
	:	
Defendant-Appellant	:	

DATE: JULY 27, 2006

CHRISTINE T. McMONAGLE, J.:

{¶ 3} Respectfully, I dissent. Initially I note that no one has raised the legitimacy or efficacy of the journal entry of conviction. While I concede that the signature appears to be that of Judge Peter J. Corrigan (and not Judge Michael Donnelly), I note that Judge Corrigan is a judge of the Court of Common Pleas, and the entry accurately reflects that which was done in the courtroom. Either Judge Corrigan signed the entry on behalf of Judge Donnelly (and failed to note that fact on the signature line) or signed it accidentally thinking the entry was one of his own; nonetheless, there is no argument that the entry does not accurately reflect the order of the court or is not in fact signed by a judge of the court.

Further, its validity is not an issue between appellant and appellee.

{¶ 4} While the majority states that Crim.R. 32(C) says that the judge who presides over the proceedings which culminated in the

judgment must sign the judgment, the rule says no such thing.<sup>1</sup> Further *In re Mitchell* (1994), 93 Ohio App.3d 153, cites two **civil** rules which clearly by their own terms do not apply to criminal proceedings. This is not a situation of a rubber stamp. This is a real judge's signature, and without further information to the contrary, it may be presumed that he read, reviewed and approved the entry. Finally, *State v. Ginocchio* (1987) 38 Ohio App.3d 105, is a municipal court case which stands for the proposition that a notation on a municipal file is not an entry of conviction or sentence and that an adequate document must bear certain indicia of a judgment; it cannot just be a handwritten notation on a file.

{¶ 5} Accordingly, I would not dismiss this matter for lack of final appealable order, and I would proceed to the merits of the appeal.

---

<sup>1</sup>Crim Rule 32(C) states "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 the 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."