

[Cite as *State v. Pierce*, 2010-Ohio-5467.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92922

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROSUE PIERCE

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-505095

BEFORE: McMonagle, J., Gallagher, A.J., and Sweeney, J.

RELEASED AND JOURNALIZED: November 10, 2010

ATTORNEYS FOR APPELLANT

Timothy Young
State Public Defender
Katherine A. Szudy
Assistant State Public Defender
Office of the Ohio Public Defender
250 East Broad St., Suite 1400
Columbus, OH 43215

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
Mary McGrath
Daniel T. Van
Assistant Prosecuting Attorneys
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, OH 44113

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, Rosue Pierce, appeals the trial court's judgment sentencing him to community control. But Pierce contends that the judgment he is appealing is not a final appealable order, so we dismiss.

I

{¶ 2} Pierce was indicted for felonious assault with a firearm specification, improperly discharging a firearm at or into a habitation, and having a weapon while under disability. He subsequently pled guilty to the

lesser charge of attempted felonious assault, without a firearm specification, and having a weapon while under disability. The trial court sentenced him to two years community control.

{¶ 3} Pierce twice violated the conditions of his community control sanctions. At Pierce's first violation hearing, the court found him in violation, but continued the community control sanctions, with a warning that if he violated again, he would be sentenced to ten years incarceration. At the second violation hearing, the trial court again found Pierce in violation, and sentenced him to seven years incarceration.

II

{¶ 4} In his first assignment of error, Pierce contends that the trial court erred at the original sentencing hearing by entering a single community control sentence of two years on multiple charges. Specifically, Pierce contends that he pled guilty to two charges and the trial court had a duty to impose a community control sentence on each charge. He contends that because the trial court did not do so, "his original conviction entry did not constitute a final appealable order," and, therefore, we should remand for resentencing.

{¶ 5} We are at a loss to explain why Pierce would assert on appeal that the judgment he seeks to reverse is not a final appealable order. Furthermore, Pierce's suggestion that we remand for resentencing because

the judgment was not a final appealable order is nonsensical. This court has no jurisdiction to review a non-final order and, hence, cannot remand for resentencing. See Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. If Pierce thought the original sentencing order was not final, his remedy was to move the trial court to amend the sentencing entry, not to appeal to this court, which cannot review a non-final order.

{¶ 6} Recently, in *State v. South*, 3rd Dist. No. 14-07-40, 2008-Ohio-1143 (*South I*), the Third District dismissed an appeal for lack of a final appealable order because the trial court had failed to impose community control sanctions on each count of defendant's multi-count conviction. The Ohio Supreme Court reversed the appellate court's judgment dismissing the appeal and ordered the appellate court to consider the merits of the appeal. *State v. South*, 120 Ohio St.3d 358, 2008-Ohio-6693, 899 N.E.2d 146 (*South II*). Thus, although this panel has some doubt regarding the validity of Pierce's position in light of *South II*, we oblige him and dismiss his appeal for lack of a final appealable order.

Dismissed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

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

CHRISTINE T. McMONAGLE, JUDGE

SEAN C. GALLAGHER, A.J., and
JAMES J. SWEENEY, J., CONCUR