

[Cite as *State v. Jones*, 2015-Ohio-2409.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102314

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ORLANDO JONES

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-585750-A

BEFORE: Jones, P.J., Keough, J., and Laster Mays, J.

RELEASED AND JOURNALIZED: June 18, 2015

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LARRY A. JONES, SR., P.J.:

{¶1} Defendant-appellant, Orlando Jones, appeals his convictions for drug trafficking, drug possession, and possessing criminal tools. For the reasons that follow, we dismiss for lack of a final appealable order.

{¶2} In 2014, Jones was charged with two counts of drug trafficking and one count each of drug possession and possessing criminal tools. The matter proceeded to a jury trial at which Jones was convicted of all charges. The trial court merged the two counts of drug trafficking for the purpose of sentencing and proceeded to sentence Jones on three convictions: drug trafficking, drug possession, and possessing criminal tools.

{¶3} At the sentencing hearing, the trial court stated the following:

So there's three felonies of the fifth degree basically here. I'm going to sentence the defendant to 16 months of Community Control. You'll be under ISP¹ supervision. He's to do 180 days of electronic home monitoring plus the cost. * * * If you violate on each of the three felonies of the fifth degree you'll receive twelve months in prison, those will run consecutive to each other, that's thirty-six months total.

{¶4} Jones filed a timely notice of appeal. On appeal, Jones raised four assignments of error challenging the sufficiency and manifest weight of the evidence, claiming the trial court erred by failing to grant a mistrial, and claiming that prosecutorial misconduct during closing arguments violated his constitutional rights. This court, however, cannot consider the merits of Jones's appeal because we do not have jurisdiction to do so as the order of sentence does not constitute a final appealable order.

¹Intensive Special Probation

{¶5} R.C. 2929.15 governs community control sanctions. R.C. 2929.15 provides that

[i]f in sentencing an offender for a felony the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may directly impose a sentence that consists of one or more community control sanctions authorized * * * .

{¶6} Crim.R. 32(C) provides that a “judgment of conviction shall set forth * * * the verdict or findings, and the sentence.” In *State v. Hicks*, 8th Dist. Cuyahoga No. 84418, 2004-Ohio-6113, ¶ 6, this court recognized that pursuant to Crim.R. 32(C), the duty to set forth the verdict or finding and the sentence for each and every criminal charge is “mandatory”; therefore, an order that “fails to impose sentence for an offense for which the offender was found guilty not only violates this rule, but renders the resultant order non-final and not immediately appealable.”

{¶7} In *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, ¶ 16, the Ohio Supreme Court held that a “‘sentence’ includes only the sanction or combination of sanctions imposed for a single offense,” thereby rejecting the sentencing packaging doctrine. Most recently, the Ohio Supreme Court applied its *Saxon* holding in *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, stating that “[a] sentence is a sanction or combination of sanctions imposed for an individual offense.” *Id.* at paragraph one of the syllabus. In *Holdcroft*, the court found that under both the Ohio Revised Code and the court’s own precedent,

conviction is composed of a finding of guilt and a sentence, a sentence is a sanction or combination of sanctions imposed for an individual offense, and

incarceration and postrelease control are types of sanctions that may be imposed and combined to form a sentence.

Id. at ¶ 6.

{¶8} Thus, absent the imposition of sentence on each and every offense for which a defendant was convicted, there is no final appealable order. *See State v. Collins*, 8th Dist. Cuyahoga No. 79064, 2001 Ohio App. LEXIS 4666 (Oct. 18, 2001); *State v. Waters*, 8th Dist. Cuyahoga No. 85691, 2005-Ohio-5137; *State v. Garner*, 11th Dist. Trumbull No. 2002-T-0025, 2003-Ohio-5222. And absent a final appealable order, this court lacks jurisdiction to hear an appeal.

{¶9} In this case, the trial court sentenced Jones to one term of community control sanctions for his three convictions. To do so was in error.

{¶10} We are aware of a few instances in which the Ohio Supreme Court has overturned the appellate court's determination that it lacked jurisdiction to hear an appeal where the trial court sentenced the defendant to a single term of community control for multiple offenses. *See State v. South*, 120 Ohio St.3d 358, 2008-Ohio-6693, 899 N.E.2d 146; *State v. Goldsberry*, 120 Ohio St.3d 275, 2008- Ohio-6103, 898 N.E.2d 46. But in those cases, the defendants had violated community control and already received a prison term. We noted this distinction in *State v. Dumas*, 8th Dist. Cuyahoga No. 95760, 2011-Ohio-2926, ¶ 16. In *Dumas*, this court found that it lacked jurisdiction to consider the appeal where the trial court imposed a single term of community control on multiple convictions and indicated no potential sanction for a violation of community control. *Id.* at ¶ 15. Although the trial court in this case indicated a potential sanction for a violation

of community control, the court still failed to sentence Jones on each of his three convictions.

{¶11} In *State v. Williams*, 3d Dist. Hancock No. 5-10-02, 2011-Ohio-995, the court found that it was error for the trial court to impose one lump five-year term of community control on three separate convictions for breaking and entering, receiving stolen property, and safecracking. In doing so, the appellate court found that the trial court violated R.C. 2929.11 through 2929.19 by not imposing a separate sentence for each offense; the trial court was required, under R.C. 2929.19(B)(5), to first sentence defendant to a term of community control on each offense and then advise him of the specific term of imprisonment that would be imposed on each offense if community control was revoked.²

{¶12} *Williams*, which was decided before *Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, relied on *Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, noting that “the Supreme Court of Ohio has repeatedly emphasized that Ohio’s felony-sentencing scheme focuses on each offense and sentence individually and not as a group or ‘sentencing package.’” *Williams* at ¶ 20. The *Williams* court noted:

“Ohio’s felony-sentencing scheme is clearly designed to focus the judge’s attention on one offense at a time. * * * [R.C. 2929.14] makes no provision for grouping offenses together and imposing a single, ‘lump’ sentence for multiple felonies. Although imposition of concurrent sentences in Ohio may appear to involve a ‘lump’ sentence approach, the opposite is actually true.

²The author of *Williams* opined that the Ohio Supreme Court reversed *Goldsberry* because the court “was concerned that the defendant was imprisoned and in need of review of the trial court’s orders.” *Williams* at ¶ 15 (Rogers, J.).

Instead of considering multiple offenses as a whole and imposing one, overarching sentence to encompass the entirety of the offenses as in the federal sentencing regime, a judge sentencing a defendant pursuant to Ohio law must consider each offense individually and impose a separate sentence for each offense.”

Id. at ¶ 20, quoting *Saxon* at ¶ 8-9.

{¶13} Although the *Saxon* court was concerned with prison sentences, it logically follows that a trial court must follow the same procedure when sentencing a defendant on community control sanctions. R.C. 2929.15 does not provide that if a court chooses to sentence a person to a community control sanction, the court may then impose only a single term, regardless of the number of charges. *Garner*, 11th Dist. Trumbull No. 2002-T-0025, 2003-Ohio-5222, at ¶ 9. Such a procedure would not only leave one or more of the offenses without a sentence, but it would prevent a reviewing court from determining to which offense the given sentence actually applies. *Id.* at ¶ 10.

{¶14} Therefore, based on the Ohio Supreme Court’s precedent as set forth in *Holdcroft* and *Saxon*, the applicable sentencing statutes, and the principles of Ohio’s felony-sentencing scheme, it is error for a trial court to sentence a defendant to a single term of community control sanctions for multiple convictions.

{¶15} Because the trial court sentenced Jones to a single lump term of community controls sanctions for multiple convictions, and because Jones had not violated the terms of his community control sanctions and no prison term had been imposed, we find that the trial court failed to issue a final order in this case. Therefore, we are without jurisdiction to hear this appeal.

{¶16} Appeal dismissed.

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

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

LARRY A. JONES, SR., PRESIDING JUDGE

KATHLEEN ANN KEOUGH, J., and
ANITA LASTER MAYS, J., CONCUR