

[Cite as *State v. Ocasio*, 2017-Ohio-88.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103972

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

UBALDO OCASIO

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-598912-A

BEFORE: McCormack, J., E.A. Gallagher, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: January 12, 2017

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TIM McCORMACK, J.:

{¶1} Defendant-appellant Ubaldo Ocasio appeals from his conviction for one count of rape, two counts of sexual battery, and several counts of gross sexual imposition, kidnapping, and endangering children. For the reasons that follow, we dismiss for lack of a final, appealable order.

{¶2} On September 4, 2015, the Cuyahoga County Grand Jury charged Ocasio in a 30-count indictment that included charges of rape; kidnapping, with sexual motivation specification; gross sexual imposition; sexual battery; and endangering children. The charges also included a sexually violent predator specification.

{¶3} The matter proceeded to a jury trial, and on December 10, 2015, the jury found Ocasio guilty on the following counts: Counts 1-12, 14, 24, and 27-30. The jury found Ocasio not guilty on Counts 13, 15-23, 25, and 26. The jury further found Ocasio to be a sexually violent predator on all eligible charges as outlined in the specifications.

{¶4} Prior to imposing sentence, the court heard from the parties regarding merger. The parties agreed that Counts 9 (rape) and 10 (sexual battery) merged, and the state elected to proceed with sentencing on Count 9. The court determined, however, that the remaining kidnapping, gross sexual imposition, and sexual battery offenses do not merge. There was no discussion regarding the endangering children counts.

{¶5} The court imposed a prison sentence as follows: Counts 1, 3, 5, and 7, GSI with sexually violent predator specification — 5 years to life on each count; Counts 2, 4, 6, 8, 11, kidnapping with sexually violent predator specification — 15 years to life

on each count; Count 9, rape with sexually violent predator specification — 25 years to life; Counts 12 and 14, GSI with sexually violent predator specification — 18 months to life on each count; and Count 24, sexual battery with sexually violent predator specification — 5 years to life. The court ordered the terms to be served consecutively for an aggregate sentence of 128 years imprisonment. The court did not impose a sentence on Counts 27 – 30, endangering children.

{¶6} Ocasio filed a timely notice of appeal, raising eight assignments of error. This court, however, cannot consider the merits of his appeal because we are without jurisdiction to do so.

{¶7} Under Crim.R. 32(C), “[a] judgment of conviction shall set forth the plea, the verdict or findings, and the sentence.” *State v. Jones*, 8th Dist. Cuyahoga No. 102314, 2015-Ohio-2409, ¶ 6, quoting *State v. Hicks*, 8th Dist. Cuyahoga No. 84418, 2004-Ohio-6113, ¶ 6. The duty under Crim.R. 32(C) to set forth a verdict and sentence for each offense 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.’” *Id.*; see also *State v. Kelley*, 8th Dist. Cuyahoga No. 97389, 2012-Ohio-2309, ¶ 5. “Absent the imposition of sentence on each and every offense for which [a defendant] was convicted, there is no final, appealable order.” *State v. Collins*, 8th Dist. Cuyahoga No. 79064, 2001 Ohio App. LEXIS 4666, 3 (Oct. 18, 2001).

{¶8} Here, the transcript from the sentencing and the trial court's sentencing entry are silent with respect to Counts 27 – 30, endangering children. Therefore, because the court failed to impose a sentence on each and every offense for which Ocasio was found guilty, the judgment of conviction is not final and appealable. Accordingly, we have no jurisdiction to hear the appeal.

{¶9} Appeal dismissed.

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

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

TIM McCORMACK, JUDGE

EILEEN A. GALLAGHER, P.J., and
EILEEN T. GALLAGHER, J., CONCUR