

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 09CA0001-M

Appellee

v.

BRENT BAILEY

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 05CR0445

Appellant

DECISION AND JOURNAL ENTRY

Dated: August 24, 2009

WHITMORE, Judge.

{¶1} Defendant-Appellant, Brent Bailey, appeals from the order of the Medina County Court of Common Pleas vacating its previous order granting his motion to withdraw his guilty plea. This Court dismisses.

I

{¶2} On March 1, 2006, Bailey pleaded guilty to two counts of aggravated vehicular homicide; one count in violation of R.C. 2903.06(A)(1), a second-degree felony and one count in violation of R.C. 2903.06(A)(2), a third-degree felony. Bailey was sentenced to seven years in prison and a lifetime license suspension.

{¶3} In July 2008, Bailey filed a motion to withdraw his guilty plea based on the trial court's failure to properly advise him of mandatory post-release control during his plea colloquy. The trial court held a hearing on the matter and concluded that it had failed to inform Bailey as to the length or the nature of his post-release control. Accordingly, the trial court granted his

motion. Following the hearing, the State filed a motion for reconsideration. Based on the State's motion, the trial court vacated its order granting Bailey's motion to withdraw his plea and reinstated its original sentencing entry.

{¶4} Bailey now appeals from the order vacating his motion to withdraw his plea, asserting one assignment of error for our review.

II

Assignment of Error

“THE TRIAL COURT ERRED DETERMINING THAT IT LACKED JURISDICTION TO PERMIT THE WITHDRAWAL OF BAILEY’S PLEA[.]”

{¶5} In his sole assignment of error, Bailey asserts that the trial court erred in vacating its order granting his motion to withdraw his plea for lack of jurisdiction because his 2006 sentencing entry was not a final, appealable order. Thus, he asserts that the trial court still had jurisdiction to consider his motion.

{¶6} This Court has jurisdiction to hear appeals only from final judgments. Article IV, Section 3(B)(2), Ohio Constitution; R.C. 2501.02. In the absence of a final, appealable order, this Court must dismiss the appeal for lack of subject matter jurisdiction. *State v. Lewis*, 9th Dist. No. 08CA009379, 2009-Ohio-3322, at ¶4, 6. The Supreme Court clarified that under Crim.R. 32(C), “[a] judgment of conviction is a final appealable order *** when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court.” *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, at syllabus.

{¶7} A review of Bailey's sentencing entry reveals that it states only that he “ha[d] been convicted” of the counts charged in his indictment; it does not set forth his guilty plea as required under Crim.R. 32(C) and clarified in *Baker*. Consequently, the sentencing entry

journalizing his convictions is not a final, appealable order. Because Bailey's sentencing entry was not a final order, when he filed the motion to withdraw his plea, the trial court continued to have jurisdiction to consider his pre-sentence motion. Crim.R. 32.1. See, e.g., *State v. Abi-Aazar*, 9th Dist. No. 21403, 2003-Ohio-4780, at ¶7 (noting that a sentence that has not been journalized amounts to judgment not having been rendered in the case); *State v. Stevens*, 11th Dist. No. 2007-P-0076, 2008-Ohio-5014, at ¶¶17-22 (concluding that a motion to withdraw a plea filed before a sentence is journalized should be treated as a pre-sentence motion under Crim.R. 32.1). Accordingly, this Court is without jurisdiction to consider Bailey's interlocutory appeal.

III

{¶8} Based on the foregoing, Bailey's appeal is dismissed as he has not appealed from a final, appealable order. Thus, we lack jurisdiction over his appeal.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

JACK BRADLEY, and MICHAEL STEPANIK, Attorneys at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and MICHAEL P. MCNAMARA, Assistant Prosecuting Attorney, for Appellee.