

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 09CA0012

Appellee

v.

GREGORY A. CHAVERS

APPEAL FROM JUDGMENT
ENTERED IN THE
WAYNE COUNTY MUNICIPAL COURT
COUNTY OF WAYNE, OHIO
CASE No. CRB 08-09-01395

Appellant

DECISION AND JOURNAL ENTRY

Dated: May 24, 2010

BELFANCE, Judge.

{¶1} Defendant-Appellant Gregory Chavers appeals from decisions of the Wayne County Municipal Court. For the reasons set forth below, we dismiss the appeal.

I.

{¶2} Chavers was a passenger in a vehicle that was stopped by police. During the course of the stop, police called a drug dog to the scene and the dog alerted. Diazepam was found on or near Chavers. Chavers, who did not have a prescription for the drug, was indicted for possession of drugs in violation of R.C. 2925.11(C)(2), a misdemeanor of the second degree. Chavers initially pled not guilty, but on January 5, 2009, changed his plea to no contest. The trial court found him guilty and referred the matter for a pre-sentence investigation. Prior to the sentencing hearing, Chavers filed a motion to withdraw his plea, a motion for a Marsden hearing, a motion to dismiss the complaint, a motion for change of venue, and a motion to suppress. Immediately prior to conducting the sentencing hearing, the trial court held a hearing on

Chavers' motions. The trial court denied Chavers' motion to withdraw his plea. Thereafter, the trial court found Chavers' motion for change of venue and motion to dismiss were moot. The trial court denied Chavers' Marsden motion and denied his motion to suppress as untimely. In its sentencing entry, the trial court sentenced Chavers to fifteen days in jail, an undefined term of house arrest, a six month license suspension, and an unspecified term or type of community control.

{¶3} Chavers has appealed, raising five assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

"Trial court erred when it denied appellant's motion to dismiss trial counsel."

ASSIGNMENT OF ERROR II

"There was Prosecutorial Misconduct committed in appellant's case at sentencing."

ASSIGNMENT OF ERROR III

"There was ineffective [sic] assistance of counsel in Appellant's case before [sic] and during the trial."

ASSIGNMENT OF ERROR IV

"Trial court erred when it denied appellant's motion to withdraw his plea of no contest."

ASSIGNMENT OF ERROR V

"Trial court erred when it denied appellant's other two motions as 'moot,' when they had a major affect and added merit to the case."

{¶4} The Ohio Constitution limits this Court's appellate jurisdiction to the review of final judgments or orders of lower courts. Section 3(B)(2), Article IV, Ohio Constitution. The Supreme Court of Ohio has held that a reviewing court should consider the definition of a final order as provided in R.C. 2505.02 when deciding whether a criminal judgment entry is a final

appealable order. *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, at ¶6. In addition the Supreme Court has stated that “[a] judgment that leaves issues unresolved and contemplates that further action must be taken is not a final appealable order.” *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, at ¶20, quoting *Bell v. Horton* (2001), 142 Ohio App.3d 694, 696. “However, when the remaining issue ‘is mechanical and unlikely to produce a second appeal because only a ministerial task similar to *assessing costs* remains,’ then the order is final and appealable.” (Emphasis in original.) *Threatt* at ¶20, quoting *State ex rel. White v. Cuyahoga Metro. Hous. Auth.* (1997), 79 Ohio St.3d 543, 546.

{¶5} Here, while the trial court did check the box indicating that Chavers was subject to community control, it failed to note the length of the term of community control or whether it was basic or intensive supervision. Pursuant to R.C. 2929.25(A)(2), “[t]he duration of all community control sanctions imposed upon an offender and in effect for an offender at any time shall not exceed five years.” Further, while the trial court sentenced Chavers to fifteen days in jail, it also indicated that Chavers could serve house arrest in lieu of jail, by circling house arrest on the sentencing form. The trial court, however, did not specify how many days of house arrest Chavers could serve in lieu of jail.

{¶6} Because Chavers’ sentencing entry fails to include the length or type of his community control sanction or the term of house arrest, we conclude that the entry is not a final, appealable order as it leaves a non-ministerial issue unresolved. *Threatt* at ¶20. We note that numerous Ohio courts have concluded that a trial court’s failure to include the amount of restitution in the judgment entry also renders the entry not final. See, e.g., *State v. Baker*, 12th Dist. No. CA2007-06-152, 2008-Ohio-4426, at ¶43; *In re P.F.*, 9th Dist. No. 07CA009243, 2008-Ohio-2105, at ¶3, reversed on other grounds by *In re P.F.*, 121 Ohio St.3d 360, 2009-Ohio-

1518, at ¶1; *State v. Kuhn*, 3rd Dist. No. 4-05-23, 2006-Ohio-1145, at ¶8; *In re Holmes* (1980), 70 Ohio App.2d 75, 77 (“The order appealed from was not a final appealable order, because it settled neither the amount of restitution nor the method of payment.”). If the failure to include restitution in an entry renders the entry non-final, we must likewise conclude that the omission of the actual terms of a sentence such as the term of community control or house arrest, renders that entry non-final as well. In the case at bar, the trial court’s entry provides no information to Chavers concerning the length or type of his community control sanction or the term of his house arrest. We therefore conclude it is not a final, appealable order.

III.

{¶7} In light of the foregoing, we are without jurisdiction to determine the merits of Chavers’ 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.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

GREGORY A. CHAVERS, pro se, Appellant.

MARTIN FRANTZ, Prosecuting Attorney, and LATECIA E. WILES, Assistant Prosecuting Attorney, for Appellee.