

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	William B. Hoffman, P.J.
Plaintiff-Appellee	:	Sheila G. Farmer, J.
	:	Julie A. Edwards, J.
-vs-	:	
	:	Case No. 2008 CA 0005
TONY SHAW, SR.	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal Appeal From Richland County Court Of Common Pleas Case No. 2007 CR 798D

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: February 17, 2009

APPEARANCES:

For Plaintiff-Appellee For Defendant-Appellant

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*Edwards, J.*

{¶1} Defendant-appellant, Tony Shaw, Sr., appeals his five year sentence for one count of felonious assault. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} On November 6, 2007, appellant pleaded guilty to one count of felonious assault with a deadly weapon as charged in a bill of information. The court deferred sentencing pending a pre-sentence investigation. On December 21, 2007, appellant was sentenced to serve a five (5) year term of incarceration.

{¶3} It is from this sentence that appellant now seeks to appeal, setting forth the following assignment of error:

{¶4} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO SENTENCE APPELLANT IN A MANNER CONSISTENT WITH SENTENCES PREVIOUSLY RENDERED FOR THE SAME CONDUCT."

{¶5} As an initial matter, we address whether the judgment appellant appealed from is a final appealable order in light of *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163. Specifically, the issue we address is finality of the judgment.

{¶6} In *Baker*, the Ohio Supreme Court held that "[a] judgment of conviction is a final appealable order under R.C. 2505.02 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) the time stamp showing journalization by the clerk of court." *Id.* at the syllabus. The *Baker* decision is based upon an interpretation of Crim.R. 32(C). Crim.R. 32(C) requires that a judgment of conviction

shall set forth the plea, the verdict or findings, and the sentence. The court in *Baker* stated that a more logical interpretation of this Crim.R. 32(C) language is that a “trial court is required to sign and journalize a document memorializing the sentence and the manner of the conviction: a guilty plea, a no contest plea upon which the court has made a finding of guilt, a finding of guilt based upon a bench trial, or a guilty verdict resulting from a jury trial.” *Baker* at paragraph 14. The *Baker* court specifically rejected any rationale that would allow two separate judgment entries to constitute a final appealable order, as there can be only one final order. *State v. Baker*, supra.

{¶7} In this case, the order appealed from is a “sentencing entry.” The order states “[t]hat the defendant has been convicted of felonious assault.” The entry appealed from does not contain the manner of conviction.

{¶8} Ohio law provides that appellate courts have jurisdiction to review only final orders or judgments. Section III, (B)(2), Article IV, Ohio Constitution; R.C. 2505.02. If an order is not final and appealable, an appellate court has no jurisdiction to review the matter.

{¶9} Since the order appealed from is a non-final order, this Court has no jurisdiction to entertain the appeal.

{¶10} Accordingly, the matter is hereby dismissed for lack of jurisdiction.

By: Edwards, J.

Hoffman, P.J. and

Farmer, J. concur

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JUDGES

JAE/1219

