

[Cite as *State v. Sanchez*, 2009-Ohio-813.]

**[Please see original opinion at 2007-Ohio-6697.]**

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
GREENE COUNTY

STATE OF OHIO

*Plaintiff-Appellee*

v.

ELVIN ANTONIO SANCHEZ

*Defendant-Appellant*

Appellate Case No. 2006-CA-154

Trial Court Case No. 06-CR-71

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**DECISION AND FINAL JUDGMENT ENTRY**

February 23, 2009

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PER CURIAM:

{¶ 1} This matter is before the court on the December 19, 2008 “Joint Motion to Vacate Judgment,” filed by Appellee, the State of Ohio, and Appellant, Elvin Sanchez. The parties request that this Court vacate its judgment and opinion rendered in the above-captioned appeal on December 14, 2007 on the basis that the trial court’s sentencing entry in case no. 2006-CR-71 was not a final appealable order. Specifically, the parties assert that the trial court’s entry failed to address an acquittal of one count, Count Ten. Furthermore, where the trial court entered a mistrial as to one count, Count Eight, the record does not demonstrate that a retrial or dismissal of said count occurred. Thus, the parties contend that the trial court’s sentencing entry was not final and appealable, as it failed to impose a sentence for each charge against Sanchez.

{¶ 2} Procedurally, we note that the Supreme Court of Ohio granted Sanchez's August 22, 2008 motion to dismiss the discretionary appeal filed therein on similar grounds.

{¶ 3} Upon consideration of the foregoing, we find the parties joint motion to vacate this Court's December 14, 2007 judgment well-taken. Appellate courts have jurisdiction to review only final orders or judgments of the lower courts in their district. Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. Thus, an appellate court has no jurisdiction to review an order or judgment that is not final, and it must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20, 540 N.E.2d 266.

{¶ 4} Sanchez cites to numerous appellate court decisions in his motion to dismiss the discretionary appeal that purport the following: " '[W]here a trial court's order fails to impose a sentence for each charge, that order is merely interlocutory.'" *State v. Moore*, Union App. No. 14-06-53, 2007-Ohio-4941, at ¶7, quoting *State v. Hoelscher*, Medina App. No. 05CA0085-M, 2006-Ohio-3531, at ¶10; *State v. Brown* (1989), 59 Ohio App.3d 1, 2, 569 N.E.2d 1068; *State v. Taylor* (May 26, 1995), Adams App. No. 94 CA 585, 1995 WL 329581; *State v. Huntsman* (Mar. 13, 2000), Stark App. No. 1999-CA-00282, 2000 WL 330013; *State v. Waters*, Cuyahoga App. No. 85691, 2005-Ohio-5137, at ¶16. We find these cases dispositive of the present matter.

{¶ 5} Accordingly, the December 19, 2008 "Joint Motion to Vacate Judgment" is SUSTAINED. This Court's December 14, 2007 judgment in Greene App. No. 06-CA-154 is hereby VACATED. Furthermore, because this Court lacks jurisdiction to consider the above-referenced appeal, it is DISMISSED for lack of a final appealable order.

SO ORDERED.

\_MARY E. DONOVAN, Presiding Judge —

\_JAMES A. BROGAN, Judge —

\_MIKE FAIN, Judge —

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