

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO, et rel.	:	JUDGES:
MILTON C. MILEY	:	Julie A. Edwards, P.J.
	:	W. Scott Gwin, J.
	:	John W. Wise, J.
Relator	:	
	:	Case No. 2010-CA-0032
-vs-	:	
	:	
	:	
JUDGE JAMES D. HENSON	:	<u>OPINION</u>
	:	
RESPONDENT	:	

CHARACTER OF PROCEEDING:	Criminal Appeal from Richland County Court of Common Pleas Case No. 2005-CR-85R
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JUDGMENT:	Writ Issued
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DATE OF JUDGMENT ENTRY:	August 11, 2010
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APPEARANCES:

For Relator

For Respondent

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Edwards, P.J.

{¶1} Relator, Milton Clyde Miley, has filed a complaint requesting the issuance of a writ of mandamus and/or procedendo compelling the trial court to issue a final, appealable order which complies with the dictates of *State v. Baker*, 119 Ohio St.3d 197. Respondent has filed a Motion to Dismiss to which Relator has filed a Reply.

{¶2} The State argues the holding in *State v. Baker* cannot be applied retroactively to cases which have already been appealed and affirmed. We have held *Baker* does apply to these cases because we lack jurisdiction to affirm a non-final order. *State v. Griffin* 2010 WL 2961516 (Ohio App. 5 Dist.). Therefore, we reject the State's argument. The sole allegation raised in the Complaint is whether Respondent should be ordered to issue a final, appealable order. On February 13, 2009, the trial court issued an "Amended Sentencing Entry" which the State argues is in compliance with *Baker*.

{¶3} We have reviewed the entry issued by the trial court on February 13, 2009. Although this Court did allow an appeal based upon this entry to proceed to a conclusion, the opinion on the merits was improvidently issued because the order is not a final, appealable order because the order did not contain a finding of guilt.

{¶4} The February 13, 2009 indicates Relator entered a plea of no contest, however, the entry does not indicate the trial court issued a finding of guilt. The Supreme Court has stated, "[W]here the indictment, information, or complaint contains sufficient allegations to state a felony offense and the defendant pleads no contest, the court must find the defendant guilty of the charged offense. *State ex rel. Stern v. Mascio*

(1996), 75 Ohio St.3d 422, 425, 662 N.E.2d 370, 373.” *State v. Bird*, 81 Ohio St.3d 582, 584, 692 N.E.2d 1013, 1015 (Ohio,1998).

{¶5} In *Baker*, the Supreme Court delineated four methods of conviction stating, “A more logical interpretation of Crim.R. 32(C)'s phrase “the plea, the verdict or findings, and the sentence” 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.” *State v. Baker*, 119 Ohio St.3d 197, 200, 893 N.E.2d 163, 166 (Ohio,2008). One of these four manners of conviction is required to be included in an entry to make the entry a final, appealable order. In the instant case, the trial court has not made a finding of guilt based upon the no contest plea. The judgment entry merely states a no contest plea was entered.

{¶6} Where as in the case at bar, the trial court refuses to issue a final, appealable order after being requested to do so, a writ of mandamus will lie. As the Supreme Court stated: “[I]f a trial court has not issued a final, appealable order and refuses to issue a revised sentencing entry, the defendant can seek to compel the court to act by filing an action for a writ of mandamus or a writ of procedendo. See *McAllister v. Smith*, 119 Ohio St.3d 163, 2008-Ohio-3881, 892 N.E.2d 914, ¶ 8; *State ex rel. Culgan v. Medina Cty. Court of Common Pleas*, 119 Ohio St.3d 535, 2008-Ohio-4609, 895 N.E.2d 805.” *State ex rel. Pruitt v. Cuyahoga Cty. Court of Common Pleas*, 2010 WL 1727902, 1 (Ohio).

{¶7} We find Relator is entitled to the issuance of the writ of mandamus. The trial court shall forthwith issue an order which complies with the dictates of *Baker*.

{¶8} WRIT ISSUED.

{¶9} COSTS WAIVED.

{¶10} IT IS SO ORDERED.

By: Edwards, P.J.

Gwin, J. and

Wise, J. concur

s/Julie A. Edwards

s/W. Scott Gwin

s/John W. Wise

JUDGES

JAE/as0708

