

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-10-1311

Appellee

Trial Court No. CR0200203089

v.

Eugene Blakely, Jr.

**DECISION AND JUDGMENT**

Appellant

Decided: September 14, 2012

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
David F. Cooper, Assistant Prosecuting Attorney, for appellee.

James J. Popil, for appellant.

\* \* \* \* \*

**HANDWORK, J.**

{¶ 1} This appeal is from the October 4, 2010 nunc pro tunc judgment of the Lucas County Court of Common Pleas, which corrected the September 2, 2003 judgment convicting and sentencing appellant, Eugene Blakely, Jr. Upon due consideration, we

find that the judgment from which the appeal was taken is not a final, appealable order and hereby dismiss the appeal.

{¶ 2} In 2003, appellant was sentenced following his conviction of murder. He sought an appeal from the judgment of conviction and sentencing and this court affirmed the judgment on January 20, 2006. In April 2010, appellant moved to correct a void sentencing judgment on the ground that the original judgment did not indicate the manner of conviction and, therefore, was not a final order pursuant to Crim.R. 32(C) and *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, syllabus. On October 4, 2010, the trial court entered a nunc pro tunc judgment entry correcting its prior judgment of conviction and sentencing to reflect the manner of conviction by jury. Appellant sought an appeal from the nunc pro tunc judgment.

{¶ 3} Pursuant to the guidelines set forth in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), appellant's court-appointed counsel has filed an appellate brief and motion to withdraw as counsel. He mailed a copy of the brief and motion to appellant and informed him that he had a right to file his own brief, but he did not do so.

{¶ 4} Appellant's counsel states in his motion that he thoroughly reviewed the record in this case and concluded that the trial court did not commit any error prejudicial to appellant. However, in compliance with the requirements of *Anders, supra*, appellant's counsel submitted a brief setting forth potential assignments of error.

{¶ 5} Shortly after the notice of appeal was filed, the Ohio Supreme Court modified the *Baker* holding in *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, and held at the syllabus that:

1. A judgment of conviction is a final order subject to appeal under R.C. 2505.02 when it sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk.

2. A nunc pro tunc judgment entry issued for the sole purpose of complying with Crim.R. 32(C) to correct a clerical omission in a final judgment entry is not a new final order from which a new appeal may be taken.

Therefore, the initial judgment of conviction and sentencing in this case was a final, appealable order when it was rendered even though it did not state the manner of conviction and the nunc pro tunc judgment merely corrected a clerical error and cannot be appealed as a new final judgment. *State v. Boles*, 6th Dist. No. L-11-1020, 2012-Ohio-385, ¶ 16.

{¶ 6} This case is ordered dismissed. Appellant is hereby ordered to pay the court costs incurred in connection with this appeal.

Appeal dismissed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.