

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, )  
 )  
 Plaintiff-Appellee, )  
 v. )  
 JERMAINE BAKER, )  
 )  
 Defendant-Appellant. )  
 \*\*\*

OSC CASE NO. **07-1184**  
On appeal from the Ninth District Court  
of Appeals, Summit County Ohio, C.A. 23713  
Trial Court Case CR 2006 09 3464(A)

Counsel for Defendant-Appellant Jermaine Baker now notifies this Honorable Court that the Ninth District Court of Appeals has entered a journal entry declaring a conflict between the Ninth District and the Twelfth District Court of Appeals. (Exhibit 4, June 27, 2007 Journal Entry of Ninth District Court of Appeals.)

This Notice is being made pursuant to Rule IV, Section 2 of the Supreme Court Rules of Practice, and in accordance with Appellate Rule 25 and Article IV, Section 3(B)(4) of the Ohio Constitution.

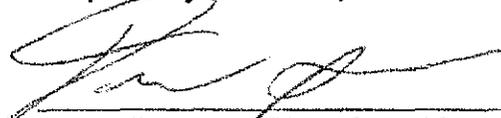
The certified conflict involves the interpretation Criminal Rule 32(C) and if the plea at arraignment, conviction, and sentence must all be contained in a single journal entry pursuant to Criminal Rule 32(C) to constitute a final, appealable order. The specific issue of conflict is "Must the judgment of conviction contain the defendant's plea, verdict, or findings, and the sentencing in one document to constitute a final, appealable order under R.C. 2505.02?" (Exhibit 4)

On May 31, 2007, the Ninth District ruled that the appeal of *State v. Jermaine Baker*, Summit App. 23713 does not contain a final, appealable order. (Exhibit 1) It ruled that the sentencing entry must contain the plea at arraignment, the criminal conviction, and the sentence in a single journal entry. (Exhibit 2, sentencing journal entry of trial court.) The Ninth District granted a motion to certify a conflict and found that its decision is in conflict with the 12th

**FILED**  
JUL 02 2007  
CLERK OF COURT  
SUPREME COURT OF OHIO

District opinion of *State v. Postway*, Butler App. 2002-06-154, 2003-Ohio-2689. (Exhibit 3) and that it is necessary for this Court to resolve the conflict.

Respectfully submitted,



DONALD GALLICK (OH - 0073421)  
ATTORNEY FOR APPELLANT  
14837 Detroit Avenue #242  
Lakewood, Ohio 44107  
(216)496-3427  
dongallick@sbcglobal.net

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true copy of this Notice of a Certified Conflict was sent via regular U.S. mail to the Office of to Summit County Prosecutor 53 University Avenue, Akron, Ohio 44308 on this 29th day of June, 2007.



DONALD GALLICK (OH - 0073421)  
ATTORNEY FOR APPELLANT

STATE OF OHIO )  
 )  
COUNTY OF SUMMIT )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

ss: COURT OF APPEALS  
SUMMIT COUNTY

STATE OF OHIO )

2007 MAY 31 PM 12:51  
C.A. NO. 23713

Appellee

SUMMIT COUNTY  
CLERK OF COURTS

v. )

JERMAINE C. BAKER )

Appellant )

JOURNAL ENTRY

Appellee has moved this Court to dismiss the appeal for lack of a final order. Appellee states that the order appealed does not contain the defendant's plea and therefore is not final and appealable. Appellant has not responded in opposition.

The motion to dismiss is granted.

The appeal is dismissed. Costs are taxed to the appellant.

The clerk of courts is ordered to mail a notice of entry of this judgment to the parties and make a notation of the mailing in the docket, pursuant to App.R. 30, and to provide a certified copy of the order to the clerk of the trial court. The clerk of the trial court is ordered to provide a copy of this order to the judge who presided over the trial court action.



*[Handwritten Signature]*  
\_\_\_\_\_  
Judge

*[Handwritten Signature]*  
\_\_\_\_\_  
Judge

JPY

**IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMMIT**

~~THE STATE OF OHIO~~

DANIEL M. HORRIGAN )

Case No. CR 06 09 3464 (A)

vs.

2007 APR -9 AM 8:01 )

JERMAINE C. BAKER

SUMMIT COUNTY )  
CLERK OF COURTS )

**JOURNAL ENTRY**

On February 21, 2007 the Prosecuting Attorney and the Defendant with counsel appeared for sentencing. On February 16, 2007 the Defendant was found GUILTY by a Jury Trial of HAVING WEAPONS WHILE UNDER DISABILITY, as contained in Count 5, and OBSTRUCTING OFFICIAL BUSINESS, as contained in Count 9, which offenses both occurred after July 1, 1996.

The Defendant's sentencing hearing was held pursuant to O.R.C. 2929.19. The Defendant was afforded all rights pursuant to Crim. R. 32. The Court has considered the record, oral statements, as well as the principles and purposes of sentencing under O.R.C. 2929.11, and the seriousness and recidivism factors under O.R.C. 2929.12

The Court inquired of the Defendant if he had anything to say why judgment should not be pronounced against him. Having nothing but what he had already said, and showing no good and sufficient cause why judgment should not be pronounced:

The Court further finds the following pursuant to O.R.C. 2929.12(B):

- (1) not to sentence the Defendant to a period of incarceration would not adequately protect society from future crimes by the Defendant, and would demean the seriousness of the offense; AND

The Court further finds the Defendant is not amenable to community control and that prison is consistent with the purposes of O.R.C. 2929.11.

The Defendant is to be committed to the OHIO DEPARTMENT OF REHABILITATION AND CORRECTION for a definite term of Two (2) years, which is not a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of HAVING WEAPONS WHILE UNDER DISABILITY, Ohio Revised Code Section 2923.13(A)(2)/(A)(3), a felony of the third (3<sup>rd</sup>) degree, serve Ninety (90) days in the Summit County Jail for punishment of the crime of OBSTRUCTING OFFICIAL BUSINESS, Ohio Revised Code Section 2921.31(A), a

felony of the second (2<sup>nd</sup>) degree, and that the said Defendant was the



This prosecution for which execution is hereby awarded; said monies to be paid to the Summit County Clerk of Courts, 205 South High Street, Akron, Ohio 44308-1662.

Pursuant to the above sentence, that the Defendant be conveyed to the Lorain Correctional Institution at Grafton, Ohio, to commence the prison intake procedure.

The sentences in this case are to be served concurrently with each other.

As part of the sentence in this case, the Defendant may be supervised by the Adult Parole Authority after Defendant leaves prison, which is referred to as post-release control, for up to Three (3) years as determined by the Adult Parole Authority.

If the Defendant violates post-release control supervision or any condition thereof, the Adult Parole Authority may impose a prison term, as part of the sentence, of up to Nine (9) months, with a maximum for repeated violations of Fifty percent (50%) of the stated prison term. If the Defendant commits a new felony while subject to post-release control, the Defendant may be sent to prison for the remaining post-release control period or Twelve (12) months, whichever is greater. This prison term shall be served consecutively to any prison term imposed for the new felony of which the Defendant is convicted.

The weapon seized by the Akron Police Department is to be returned to its rightful owner, Wayne Smith, Forthwith.

Credit for all time served is to be calculated by the Summit County Adult Probation Department, and will be forthcoming in a subsequent journal entry.

The Court informed the Defendant of his right to appeal pursuant to Rule 32A2, Criminal Rules of Procedure, Ohio Supreme Court, and further the Court will appoint counsel to represent the said Defendant for purposes of appeal due to said Defendant's indigency.

APPROVED:  
April 3, 2007  
trms

  
ELMORE MARSH STORMER, Judge  
Court of Common Pleas  
Summit County, Ohio

cc: Prosecutor Adam VanHo/Charlotte Hardy  
Criminal Assignment  
Attorney Patrick Summers #13  
Adult Probation Department  
Booking  
Registrar's Office  
Barb A. Gable - Prosecutor's Office  
APD - Ken Pullen

[Cite as *State v. Postway*, 2003-Ohio-2689.]

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : CASE NO. CA2002-06-154  
 :  
 -vs- : O P I N I O N  
 : 5/27/2003  
 :  
 JARROD C. POSTWAY, :  
 :  
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
Case No. CR02-02-0220

Robin N. Piper, Butler County Prosecuting Attorney, Randi E. Froug, Government Services Center, 315 High Street, 11<sup>th</sup> Floor, Hamilton, OH 45012-0515, for plaintiff-appellee

John T. Willard, 6 S. Second Street, Suite 206, Hamilton, OH 45011, for defendant-appellant

YOUNG, J.

{¶1} Defendant-appellant, Jarrod Postway, appeals his conviction in the Butler County Court of Common Pleas for robbery. We affirm appellant's conviction.

{¶2} Appellant was arrested in connection with a robbery of a woman near an ATM. He was indicted for robbery pursuant to



R.C. 2911.02(A)(3), a second-degree felony. He pled guilty to robbery in violation of R.C. 2911.02(A)(2), a third-degree felony. The trial court accepted appellant's plea, found him guilty of robbery, and sentenced him to four years in prison. Appellant now appeals his conviction, raising three assignments of error.

Assignment of Error No. 1

{¶3} "THE JUDGMENT ENTRY OF CONVICTION FILED JUNE 18, 2002, FAILS TO CONFORM TO THE REQUIREMENT OF CRIMINAL RULE 32(C) IN THAT THE JUDGMENT ENTRY OF CONVICTION FAILS TO SET FORTH THE PLEA OF THE DEFENDANT/APPELLANT IN THE INSTANT CASE."

Assignment of Error No. 2

{¶4} "THE TRIAL COURT IN THE INSTANT CASE ERRED IN THAT IT FAILED TO COMPLY WITH CRIMINAL RULE 11(C)(2) PRIOR TO ACCEPTING THE PLEA OF THE APPELLANT IN THE INSTANT CASE."

Assignment of Error No. 3

{¶5} "IT WAS ERROR FOR THE TRIAL COURT TO MAKE A FINDING DURING THE SENTENCING HEARING THAT THE DEFENDANT LACKED REMORSE OR THAT SERIOUS HARM WAS INFLICTED UPON THE VICTIM WITHOUT A FULL EVIDENTIARY HEARING ON MATTERS THAT WERE CONTESTED."

{¶6} In his first assignment of error, appellant contends that the Judgment Entry of Conviction does not comply with Crim.R. 32(C) because it fails to set forth his plea. Crim.R. 32(C) states: "A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. If the defendant is found not guilty or for any other reason is entitled to

be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk."

{¶7} The judgment entry of conviction in this case states that appellant was found guilty of robbery, but does not state that appellant pled guilty to the charge. However, another time-stamped and journalized entry in the case indicates that appellant pled guilty to the charge and that the trial court accepted the plea. The entry is signed by the trial court, appellant, his counsel and the prosecuting attorney. These two entries set forth the trial court's judgment and are sufficient to meet the requirements of Crim.R. 32(C). Wadsworth v. Morrison (Apr. 1, 1992), Medina App. No. 2047. Accordingly, appellant's first assignment of error is overruled.

{¶8} In his second assignment of error, appellant contends that the trial court failed to comply with Crim.R. 11(C)(2) prior to accepting his guilty plea. Crim.R. 11(C)(2) states:

{¶9} "In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and

{¶10} "shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

{¶11} "(a) Determining that the defendant is making the plea voluntarily, with understanding of the nature of the charges and of the maximum penalty involved, and, if applicable, that the

defendant is not eligible for probation or for the imposition of community control sanctions at the sentencing hearing.

{¶12} "(b) Informing the defendant of and determining that the defendant understands the effect of the plea of guilty or no contest, and that the court, upon acceptance of the plea, may proceed with judgment and sentence.

{¶13} "(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself."

{¶14} A trial court must strictly comply with the provisions of Crim.R. 11 that relate to constitutional rights. State v. Ballard (1981), 66 Ohio St.2d 473, paragraph two of the syllabus. Although the trial court is not required to use the exact words of the rule, the record must show that the trial court explained these rights in a manner reasonably intelligible to the defendant. Id. With regard to the requirements of Crim.R. 11 that do not involve the waiver of a constitutional right, the court need only substantially comply with the rule. Id. at 476; State v. O'Connor, Butler App. No. CA2001-08-195, 2002-Ohio-4122.

{¶15} Appellant argues that prior to accepting his plea, the trial court advised him that he could get a sentence for one to five years, no reduction for good time, and issues regarding post-release control. Appellant contends that the trial court then explained the various pleas available to him, and he pled guilty. Appellant argues that it was not until after his guilty plea that the trial court explained the remainder of his Crim.R. 11(C) rights.

{¶16} However, a review of the record reveals that the trial court explained the above requirements to appellant, along with the different pleas, then asked how appellant wished to plead. Appellant answered, "guilty." The trial court then discussed appellant's various Crim.R. 11(C) rights to him, stopping after each one to ensure that appellant understood the right and that he understood he was giving up the right by pleading guilty. It was only after the trial court engaged in this colloquy with appellant that it accepted his plea. Therefore, we find the trial court complied with Crim.R. 11(C) by advising appellant of his rights before accepting his plea.

{¶17} Appellant also argues that the trial court's error was "complicated" by the prosecutor misstating the code section appellant was charged with and pled guilty to in the statement of facts. The prosecutor stated that the "offense is a felony of the second degree in violation of Ohio Revised Code Section 2811.02(A)(2)." The prosecutor continued by stating, "It's my understanding that that has been amended to (A)(3), a felony of

the third degree." The correct code section is R.C. 2911.02, not 2811.02. However, the record contains several statements of the correct code section by the court and appellant's written plea states the correct code section. There is no evidence to indicate that appellant was in any way misled by the prosecutor's one misstatement of the code section. Appellant's second assignment of error is overruled.

{¶18} In his third assignment of error, appellant contends that the trial court erred in finding that he lacked remorse and that the victim suffered serious harm. Appellant argues that during the sentencing hearing the trial court asked if he remembered dragging the victim 50 to 75 feet across the parking lot. Appellant responded that the statement was not true that he did not drag the victim at all. The prosecutor responded that the police reported cuts and scrapes on the victim and that pictures were taken of the injuries. The trial court then asked to see the pictures. Appellant contends that it was error for the trial court to consider this evidence without a full evidentiary hearing.

{¶19} However, the rules of evidence do not strictly apply in sentencing hearings. State v. Cook, 83 Ohio St.3d 404, 425, 1998-Ohio-291. Evid.R. 101(C) states that the rules of evidence, including the hearsay rule, do not apply to certain criminal proceedings, including sentencing. Accordingly, the trial court may rely on reliable hearsay in its sentencing decision. Thus, the trial court did not err in allowing hearsay

the third degree." The correct code section is R.C. 2911.02, not 2811.02. However, the record contains several statements of the correct code section by the court and appellant's written plea states the correct code section. There is no evidence to indicate that appellant was in any way misled by the prosecutor's one misstatement of the code section. Appellant's second assignment of error is overruled.

{¶18} In his third assignment of error, appellant contends that the trial court erred in finding that he lacked remorse and that the victim suffered serious harm. Appellant argues that during the sentencing hearing the trial court asked if he remembered dragging the victim 50 to 75 feet across the parking lot. Appellant responded that the statement was not true that he did not drag the victim at all. The prosecutor responded that the police reported cuts and scrapes on the victim and that pictures were taken of the injuries. The trial court then asked to see the pictures. Appellant contends that it was error for the trial court to consider this evidence without a full evidentiary hearing.

{¶19} However, the rules of evidence do not strictly apply in sentencing hearings. State v. Cook, 83 Ohio St.3d 404, 425, 1998-Ohio-291. Evid.R. 101(C) states that the rules of evidence, including the hearsay rule, do not apply to certain criminal proceedings, including sentencing. Accordingly, the trial court may rely on reliable hearsay in its sentencing decision. Thus, the trial court did not err in allowing hearsay

STATE OF OHIO )  
COUNTY OF SUMMIT ) ss:  
COURT OF APPEALS )  
DANIEL L. MERTIGAN )

NINTH JUDICIAL DISTRICT

STATE OF OHIO )  
JUN 27 10 13:32 )

C.A. NO. 23713

Appellee )  
SUMMIT COUNTY )  
CLERK OF COURTS )

v. )

JERMAINE C. BAKER )

Appellant )

JOURNAL ENTRY



Appellant has moved, pursuant to App.R. 25, to certify a conflict between the judgment in this case, which was journalized on May 31, 2007, and the judgment of the Twelfth District Court of Appeals in *State v. Postway*, 12th Dist. No. 2002-06-154, 2003-Ohio-2689. Appellee has not responded in opposition.

In the current appeal, the defendant's judgment of conviction failed to contain his plea. This Court dismissed the appeal for lack of a final, appealable order, holding that where a judgment of conviction does not contain the plea, verdict or findings, and sentence in one journal entry, the order fails to comply with Crim.R. 32(C) and therefore is not final and appealable. In so holding, the Court relied upon the express language of Crim.R. 32(C), which provides:

"A judgment of conviction shall set forth the plea, the verdict or findings, and the sentence. \* \* \* The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk."

In *State v. Postway*, the conviction order also failed to contain the plea. Rather than dismiss the appeal for lack of finality, the 12<sup>th</sup> District proceeded to the merits and determined that the trial court did not err in issuing a judgment of conviction that omitted the defendant's plea. The court noted that a second time-stamped and journalized

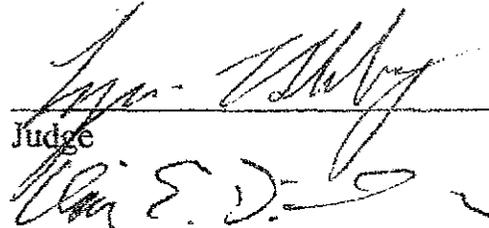
judgment entry did contain the plea and concluded that two separate entries may fulfill Crim.R. 32(C)'s requirements.

Article IV, Section 3(B)(4) of the Ohio Constitution requires this Court to certify the record of the case to the Ohio Supreme Court whenever the "judgment \*\*\* is in conflict with the judgment pronounced upon the same question by any other court of appeals in the state[.]" "[T]he alleged conflict must be on a rule of law -- not facts." *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St. 3d 594, 596.

Appellant has proposed that a conflict exists between this district and the Twelfth District. We agree and certify the following issue:

Must the judgment of conviction contain the defendant's plea, verdict or findings, and the sentence in one document to constitute a final, appealable order under R.C. 2505.02?

We find that a conflict of law exists; therefore, the motion to certify is granted.

  
\_\_\_\_\_  
Judge

  
\_\_\_\_\_  
Judge