

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

State of Ohio

Court of Appeals No. L-10-1356

Appellee

Trial Court No. CR0200303244

v.

Hisham El-Amin

DECISION AND JUDGMENT

Appellant

Decided: May 20, 2011

* * * * *

Deborah Kovac Rump, for appellant.

* * * * *

PER CURIAM.

{¶1} Appellant, Hisham El-Amin, has filed a motion to revise his brief that was filed in 2005 in his first appeal (L-05-1286) from the Lucas County Court of Common Pleas' judgment convicting him of two counts of rape. In that appeal, this court affirmed his conviction. Subsequently, the Ohio Supreme Court decided the case of *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330 in which the court held that a sentencing judgment that does not state the means of conviction, as required by Crim.R. 32(C), is void. El-Amin's 2005 sentencing judgment does not state the means of conviction.

Therefore, El-Amin filed a motion in the common pleas court to correct his judgment of conviction so that it conforms to the *Baker* ruling. On November 16, 2010, the common pleas court judge issued a nunc pro tunc judgment that reiterated the original 2005 judgment of conviction but added that "the defendant was found guilty by a jury."

{¶2} On December 9, 2010, El-Amin filed the present notice of appeal from the November 2010 nunc pro tunc entry. In this appeal, appellant intends to re-litigate all issues raised in his 2005 appeal and asks, in this present motion, to add additional arguments to his 2005 brief for the court to address in this present appeal. Because the Ohio Supreme Court in *Baker* held that a sentencing entry that did not contain means of conviction was void, appellant believes that he can appeal his conviction as if the original judgment from 2005 never existed. This would be a valid assumption if the Ohio Supreme Court had not decided *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238 ("The scope of an appeal from a resentencing hearing * * * is limited to issues arising at the resentencing hearing." ¶ 40), and *State ex rel. DeWine v. Burge*, 128 Ohio St.3d 236, 2011-Ohio-235.

{¶3} In *DeWine*, the Ohio Supreme Court states:

{¶4} "[T]he technical failure to comply with Crim.R. 32(C) by not including the manner of conviction * * * is not a violation of a statutorily mandated term, so it does not render the [first] judgment a nullity." *Id.* at ¶8.

{¶5} Thus, El-Amin's belief that he can now appeal his 2005 conviction as if the original judgment of conviction from 2005 never existed, is erroneous. See this court's recent decision, *State v. Triplett*, 6th Dist. No. L-10-1158, 2011-Ohio-1713. The only issue that El-Amin can now appeal is whether the November 16, 2010 resentencing entry complies with Crim.R. 32(C).

{¶6} Accordingly, appellant's Motion to Revise Brief is denied.

MOTION DENIED.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

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:
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