

[Cite as *State v. Glass*, 2016-Ohio-8176.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

| | | |
|---------------------|---|---------------------|
| STATE OF OHIO |) | CASE NO. 15 MA 0099 |
| |) | |
| PLAINTIFF-APPELLEE |) | |
| |) | |
| VS. |) | OPINION AND |
| |) | JUDGMENT ENTRY |
| DERRICK GLASS |) | |
| |) | |
| DEFENDANT-APPELLANT |) | |

| | |
|---------------------------|---|
| CHARACTER OF PROCEEDINGS: | Criminal Appeal from the Court of Common Pleas of Mahoning County, Ohio Case No. 91 CR 691 |
|---------------------------|---|

| | |
|-----------|------------|
| JUDGMENT: | Dismissed. |
|-----------|------------|

APPEARANCES:

| | |
|-------------------------|--|
| For Plaintiff-Appellee: | Atty. Paul J. Gains Mahoning County Prosecutor Atty. Ralph M. Rivera Assistant Prosecuting Attorney 21 West Boardman Street, 6 th Floor Youngstown, Ohio 44503 |
|-------------------------|--|

| | |
|--------------------------|--|
| For Defendant-Appellant: | Derrick Glass, <i>Pro se</i> 341 Carroll Street Youngstown, Ohio 44502 |
|--------------------------|--|

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Carol Ann Robb

Dated: December 13, 2016

[Cite as *State v. Glass*, 2016-Ohio-8176.]
PER CURIAM.

{¶1} This appeal arose out of a judgment entry dated June 4, 2015 from the Mahoning County Court of Common Pleas which attempted to correct several errors earlier contained within a March 27, 1992 judgment entry of the trial court. Appellant Derrick Glass contends that the 1992 entry is void due to several alleged errors and that the 2015 attempt to correct these was equally improper. For the reasons provided, this appeal is dismissed for lack of a final appealable order.

Factual and Procedural History

{¶2} On November 25, 1991, Appellant pleaded guilty to aggravated trafficking in violation of R.C. 2925.03(A)(1), (C)(1), a felony of the third degree. Appellant was sentenced on March 27, 1992 to two years of incarceration and two years of community control. The trial court suspended the prison sentence. Appellant failed to appeal either his conviction or sentence.

{¶3} On February 12, 2015, Appellant filed a motion requesting that the trial court determine that its March 27, 1992 judgment entry was void based on several errors Appellant asserted were contained within the entry. Appellant argued that in its 1992 entry the court erred as follows: the judge failed to make a specific finding of guilt, failed to state the felony classification, failed to include as a penalty the mandatory driver's license suspension, failed to notify Appellant of his appellate rights, and improperly modified the charged offense outside of Appellant's presence. As a remedy, Appellant requested that his guilty plea and the trial court's sentencing entry be voided. The state conceded that the 1992 entry contained errors, but argued that a *nunc pro tunc* entry was the proper remedy. The trial court agreed with

the state. On June 4, 2015, the court entered an order acknowledging errors were contained in the 1992 sentencing entry and indicating that these would be corrected. However, no further follow-up order was entered.

Final Appealable Order

{¶4} Pursuant to R.C. 2505.02, an order is final and appealable if:

- (1) * * * [it] affects a substantial right in an action that in effect determines the action and prevents a judgment;
- (2) * * * affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;
- (3) * * * vacates or sets aside a judgment or grants a new trial;
- (4) * * * grants or denies a provisional remedy and to which both of the following apply:
 - (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.
 - (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.
- (5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code.

{¶15} Although not raised by the parties, we find that the trial court's June 4, 2015 entry is not a final appealable order. While the parties refer to the entry as a *nunc pro tunc* entry, it is simply entitled "Order." The order states, in relevant part, "[w]herefore, pursuant to *Criminal Rule 36*, **IT IS HEREBY ORDERED** that a *Nunc Pro Tunc* order shall issue to correct the omissions and clerical errors of the Court's original judgment entry dated March 27, 1992." (Emphasis sic.) (6/4/15 Order, p. 1.)

{¶16} The court's language reflects that the court intended to enter an appropriate follow-up order, but no such order was entered.

{¶17} Accordingly, the June 4, 2015 entry is not a final appealable order. Appeal dismissed. Costs waived.

Waite, J., concurs.

Donofrio, P.J., concurs.

Robb, J., concurs.