[Cite as *State v. Glass*, 2016-Ohio-8177.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	CASE NO. 15 MA 0100
	)	
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. 00 CR 50

JUDGMENT: Dismissed.

APPEARANCES:

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

For Defendant-Appellant:
Derrick Glass, *Pro se*
341 Carroll Street
Youngstown, Ohio 44502

JUDGES:

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

Dated: December 13, 2016

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PER CURIAM.

{¶1} This appeal arose out of a judgment entry of June 4, 2015 from the Mahoning County Court of Common Pleas which attempted to correct several errors earlier contained within a November 23, 2001 judgment entry of the trial court. Appellant Derrick Glass contends that the 2001 judgment entry is void because the trial court failed to comply with the mandatory statutes when entering judgment. Appellant also argues that the trial court's 2015 attempt to correct the errors is also improper. For the reasons provided, this appeal is dismissed for lack of a final appealable order.

Factual and Procedural History

{¶2} On November 23, 2001, Appellant was convicted of possession of cocaine in violation of R.C. 2925.11(A), (C)(4)(c), a felony of the third degree, and was sentenced to one year of community control. Appellant failed to appeal the judgment.

{¶3} On February 12, 2015, Appellant filed a motion requesting that the trial court determine that its November 23, 2001 entry was void based on several errors allegedly contained within the entry. Appellant argued that in its 2001 entry the court erred as follows: the judge failed to include as a penalty a mandatory driver's license suspension, failed to notify Appellant of the mandatory driver's license suspension, failed to determine whether the fines or costs were waived due to his indigency, and the judge improperly modified the charged offense outside of Appellant's presence. Because he argued that the 2001 entry was void, Appellant requested as a remedy that his guilty plea and sentence be vacated. The state conceded that the 2001 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 2001 sentencing entry and indicating that these would be corrected in an order that was to follow. However, no such 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.

{¶5} 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 entry is referred to by the parties 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 November 23, 2001." (Emphasis sic.) (6/4/15 Order, p. 1.)

{¶6} The court's language reflects that a second order was to be entered to correct the errors. No follow-up entry was filed.

{¶7} Accordingly, the trial court's June 4, 2015 entry is not a final appealable order. Appeal dismissed. Costs waived.

Waite, J., concurs.

Donofrio, P.J., concurs.

Robb, J., concurs.