

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ADAMS COUNTY

STATE OF OHIO,	:	
	:	Case Nos. 24CA1188
Plaintiff-Appellant,	:	24CA1189
	:	
v.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
DAYSRING BACK, ET AL.,	:	
	:	
Defendants-Appellees.	:	RELEASED: 11/15/2024

APPEARANCES:

Aaron Haslam, Adams County Prosecuting Attorney, and Tyler E. Cantrell, Assistant Adams County Prosecuting Attorney, West Union, Ohio, for appellant.

Dayspring Back and Kayla Back, Rome, Ohio, pro se, appellees.¹

Wilkin, J.

{¶1} In this consolidated appeal, the State appeals the Adams County Court’s judgment entries finding Dayspring Back and Kayla Back guilty of menacing, a fourth-degree misdemeanor. At the arraignment hearing, both Dayspring and Kayla pleaded no contest to their respective menacing offenses. The trial court accepted their no contest pleas, found them guilty, and proceeded to sentencing. The trial court did not impose any jail time or probation. The trial court, however, ordered each to pay a \$100 fine and court costs. Neither the State nor the four victims of the menacing offenses were present at the hearing.

{¶2} In its sole assignment of error, the State asserts that the trial court

¹ Dayspring and Kayla did not appear or otherwise participate in their respective appeal.

violated the victims' constitutional rights under Marsy's Law and the prosecution's rights by failing to notify them of the sentencing hearing.

{¶3} We are unable to address the merits of the State's arguments because we lack jurisdiction. The State did not request leave to appeal and the issue presented is not one that the State may appeal as a matter of right pursuant to R.C. 2945.67(A).

FACTS AND PROCEDURAL BACKGROUND

{¶4} Dayspring and Kayla are married and have had a conflicted history with the victims C.J., R.J., M.J., and J.J. On February 12, 2024, two complaints were filed against Dayspring and Kayla with each alleging they committed the offense of menacing, a fourth-degree misdemeanor, by sending threatening messages to the four victims. A summons was issued and personal service was completed on both Dayspring and Kayla. The summons ordered both to appear on February 26, 2024, for arraignment.

{¶5} At the joint arraignment hearing, Dayspring and Kayla appeared without counsel. The prosecution and the victims did not appear.

{¶6} Dayspring and Kayla were advised of the nature of the offense, the maximum penalty they faced, and their plea options. Both Dayspring and Kayla informed the trial court that they wanted to plead no contest to their respective menacing offense. Dayspring, however, had a question as to why they were being charged for the same set of facts that resulted in a protection order. The trial court explained the difference between civil and criminal proceedings. Dayspring informed the trial court that she understood.

{¶17} The trial court advised them of the rights they waive by pleading no contest and provided them with a document that outlined their rights. After reviewing the document, Dayspring and Kayla signed the waiver of rights document and indicated they wanted to plead no contest. The trial court inquired of the facts underlying the offense. Dayspring and Kayla admitted to sending threatening messages to the victims, one of which threatened to beat them up. Dayspring and Kayla explained that there has been an ongoing conflict with the victims also threatening and harassing them. The trial court reminded Dayspring and Kayla that the only cases before the judge is their criminal conduct and the concern is Dayspring and Kayla's behavior.

{¶18} Dayspring and Kayla acknowledged their behavior and pleaded no contest to menacing. The trial court found that there was a threat of physical harm to the victims that supports a menacing conviction. After finding Dayspring and Kayla have voluntarily, knowingly, and intelligently pleaded no contest, the trial court proceeded to sentencing noting that

the State of Ohio was given the opportunity to be here. They're still, uh, upstairs in their office and not come to the hearing, uh, given notice of the hearing. The, uh, uh, matter was given notice to the victims.

{¶19} In determining the appropriate sentence, the trial court focused on the protection of the victims and that there is a protection order issued from the Adams County Common Pleas Court that orders Dayspring and Kayla to have no contact with the victims. Dayspring and Kayla both acknowledged the protection order and that they have no intention of contacting or being near the victims. The

trial court decided to impose no jail time or place Dayspring and Kayla on probation. The trial court, however, imposed a financial sanction of \$100 fine and court costs.

{¶10} It is from these judgment entries that the State appeals.²

ASSIGNMENT OF ERROR

THE COURT ERRED IN ALLOWING THE SENTENCING TO BE CONDUCTED WITHOUT THE STATE OF OHIO NOR THE VICTIM TO BE PRESENT NOR NOTIFIED OF THE SENTENCING.

{¶11} The State maintains that the trial court violated Crim.R. 32, R.C. 2930, and the Ohio Constitution Article I, Section 10a, when it failed to notify the State and the victims of the sentencing hearing. According to the State, the trial court proceeded from arraignment to sentencing which prevented any opportunity for a notice of the sentencing hearing to be sent to the victims and prosecution. The State acknowledges that it and the victims were informed of the arraignment hearing, but not that it would also be a sentencing hearing. Thus, the victims' rights were violated by not giving them the opportunity to provide their input on Dayspring and Kayla's sentence. Similarly, the prosecution was not heard regarding sentencing.

I. Law and analysis

{¶12} In 2017, Article I, Section 10 of the Ohio Constitution was amended with the voters adopting the initiative known as Marsy's Law. *See State v. Fisk*, 2022-Ohio-4435, ¶ 7, citing Ohio Secretary of State, Ballot Board: 2017. The purpose of the amendment is to "secure for victims justice and due process

² The State presents the same assignment of error and the same arguments in both appeals.

throughout the criminal and juvenile justice systems[.]” Ohio Const., art. I, §10a(A). The victims’ rights “shall be protected in a manner no less vigorous than the rights afforded to the accused” and include:

- (2) upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings;
- (3) to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated;
- ...
- (10) to be informed, in writing, of all rights enumerated in this section.

Id., §10a(A)(1), (2), (3) and (10).

{¶13} Moreover, the provisions outlining the victims’ rights are “self-executing and severable, and shall supersede all conflicting state laws.” *Id.*, §10a(E). As the plain wording of Marsy’s Law demonstrates, the victims had the right to be notified of Dayspring and Kayla’s sentencing hearing and to be heard.

{¶14} In the matter at bar, however, we are unable to reach the merits of the State’s appeal as to whether the victims’ rights and/or the prosecution’s rights were violated. This is because we lack jurisdiction.

{¶15} The State may appeal as “a matter of right” in a criminal case a decision by the trial court that:

- grants a motion to dismiss all or any part of an indictment, complaint, or information, a motion to suppress evidence, or a motion for the return of seized property or grants post conviction relief pursuant to sections 2953.21 to 2953.24 of the Revised Code[.]

R.C. 2945.67(A).

{¶16} Additionally, R.C. 2945.67(A) grants the State the right to appeal “in accordance with section 2953.08 of the Revised Code, a sentence imposed upon

a person who is convicted of or pleads guilty to a felony.” Here, the State is not appealing the trial court’s grant of a motion to dismiss, a motion to suppress, a motion for a return of seized property, or a decision granting postconviction relief. Further, Dayspring and Kayla were convicted of menacing, a fourth-degree misdemeanor.

{¶17} The State “may appeal by leave of the court to which the appeal is taken any other decision, except the final verdict[.]” R.C. 2945.67(A). In order to seek leave to appeal, the State must follow the procedures outlined in App.R. 5(C). See *State v. Ndubueze*, 2024-Ohio-1414, ¶ 33 (12th Dist.). Pursuant to App.R. 5(C) “a motion for leave to appeal shall be filed with the court of appeals within thirty days from the entry of the order sought to be appealed[.] . . . Concurrently with the filing of the motion, the movant shall file with the clerk of the trial court a notice of appeal in the form prescribed by App.R. 3[.]”

{¶18} “[W]hether the state is permitted to appeal as of right or should have filed a motion for leave to appeal is a jurisdictional issue and is established by the answer to this question: What matter of judgment does the state seek to appeal?” *State v. Powers*, 2015-Ohio-5124, ¶ 11 (10th Dist.). In the cases at bar, the State is appealing the trial court’s decision to proceed to sentencing after accepting Dayspring and Kayla’s no contest pleas without the presence of the victims or prosecution. Thus, the trial court’s judgment entry of conviction falls under “any other decision” that required the State to file a motion for leave to file an appeal. The State failed to do so.

{¶19} Section 3(B)(2), Article IV of the Ohio Constitution establishes that courts of appeals “shall have such jurisdiction *as may be provided by law* to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the courts of appeals within the district.” (Emphasis added.) Thus, because the State failed to comply with R.C. 2945.67 and App.R. 5(C), we lack jurisdiction to review the issue.

{¶20} This conclusion is consistent with the Twelfth District Court of Appeals in which the court recently dismissed the State’s cross-appeal for lack of jurisdiction on a similar issue. *Ndubueze*, 2024-Ohio-1414 (12th Dist.). In *Ndubueze*, the State cross-appealed arguing the trial court violated Marsy’s Law. *Id.* at ¶ 30. The Twelfth District dismissed the cross-appeal because that issue falls under “any other decision” requiring the State to request leave to appeal. *Id.* at ¶ 34. And the State “failed to do so and, therefore, has not properly invoked our jurisdiction.” *Id.*

{¶21} Here, the State did not file a motion for leave to appeal the trial court’s sentencing order that involved a misdemeanor sentence. The State’s arguments challenging the trial court’s judgment entries do not involve issues that would grant the State the right to appeal as a matter of right. See R.C. 2945.67. Therefore, because the State failed to comply with R.C. 2945.67 and App.R. 5(C), we lack jurisdiction to address the State’s appeals.

CONCLUSION

{¶22} The State’s appeals are dismissed for its failure to request leave to appeal Dayspring and Kayla’s misdemeanor sentences.

APPEALS DISMISSED.

JUDGMENT ENTRY

It is ordered that the APPEALS BE DISMISSED and appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Adams County Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.