

[Cite as *State v. El*, 2017-Ohio-8165.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105089

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ALQAADIR M. EL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-603254-A

BEFORE: McCormack, P.J., E.T. Gallagher, J., and Blackmon, J.

RELEASED AND JOURNALIZED: October 5, 2017

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TIM McCORMACK, P.J.:

{¶1} Defendant-appellant Alqaadir M. El appeals his conviction following a guilty plea. Upon review, we affirm. However, we remand the matter for the trial court to issue a nunc pro tunc entry to accurately reference the specification for which sentence is imposed and the sentence imposed for the specification pursuant to R.C. 2929.19(B)(2)(b).

{¶2} On March 1, 2016, El was charged in a two-count indictment: Count 1 — driving while under the influence in violation of R.C. 4511.19(A)(1)(a), which included a furthermore specification that within the last six years El had previously been convicted of or pleaded guilty to three violations of R.C. 4511.19(A)(1)(a); and Count 2 — drug possession in violation of R.C. 2925.11(A). On May 24, 2016, El withdrew his previously entered not guilty plea and pleaded guilty to Count 1, a “low-tier” felony of the fourth degree. In exchange, the state agreed to dismiss Count 2. El also agreed to make restitution in the amount of \$2,500 for damage he caused to the Ohio State Highway Patrol cruiser he struck while driving.

{¶3} The trial court accepted El’s guilty plea; found his plea to be knowingly, intelligently, and voluntarily made; and found him guilty of driving while under the influence in violation of R.C. 4511.19(A)(1)(a). Thereafter, the court sentenced El to seven months at the Lorain Correctional Institution, \$2,500 in restitution, and a mandatory fine of \$1,350. Upon imposition, the court explained that El was required to serve a mandatory 60 days along with an optional, additional term of 6 to 30 months.

The court also ordered El to attend an alcohol and drug treatment program and suspended his driver's license for life.

{¶4} On October 24, 2016, El filed a pro se motion to file a delayed appeal and a motion for the appointment of counsel. This court granted El's motions and appointed counsel. El then filed this appeal with the assistance of counsel, assigning two errors for our review:

- I. The court erred in failing to include in the sentencing entry the name and section reference to the sentence and failed to include [the] name and section reference to the specification.
- II. The court erred in failing to inform appellant at the time of sentencing of his right to appeal, denying appellant of his right to due process.

{¶5} In his first assignment of error, El contends that the trial court erred in failing to comply with R.C. 2929.19(B)(2)(b) and this failure has resulted in prejudice, because he is "without sufficient information to determine whether the sentence imposed" was proper.

{¶6} R.C. 2929.19(B)(2)(b) provides that if the sentencing court determines that a prison term is "necessary or required," it shall:

[i]n addition to any other information, include in the sentencing entry the name and section reference to the offense or offenses, the sentence or sentences imposed and whether the sentence or sentences contain mandatory prison terms, if sentences are imposed for multiple counts

whether the sentences are to be served concurrently or consecutively, and the name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specification or specifications[.]

{¶7} The sentencing entry in this case stated as follows:

Defendant in court. * * * On [a] former day of court, the defendant plead[ed] guilty to driving while under the influence of alcohol or drugs [in violation of] 4511.19(A)(1)(a), F4, as charged in Count(s) 1 of the indictment. Count(s) 2 was/were nolle. Defendant addresses the court, prosecutor addresses the court. The court considered all required factors of the law. The court finds that prison is consistent with the purpose of R.C. 2929.11. The court imposes prison sentence at the Lorain Correctional Institution of 7 month(s). Defendant ordered to alcohol/drug program, lifetime license suspension, restricted plates, interlock, 6 points on driver's license, * * * postrelease control * * *, restitution ordered in the amount of \$2,500.00, * * * a fine in the amount of \$1,350.00. * * *

{¶8} As demonstrated above, although the sentencing entry includes the name and section number of the offense, as well as the sentence imposed, the entry fails to reference the furthermore specification for which El was convicted or the sentence imposed for that specification. This court has held, however, that a trial court's failure to provide R.C. 2929.19(B)(2)(b) notification does not affect the validity of a sentence that has already been imposed:

“The failure of the court to notify the offender that a prison term is a mandatory prison term pursuant to division (B)(2)(a) of this section or to include in the sentencing entry any information required by division (B)(2)(b) of this section does not affect the validity of the imposed sentence

or sentences. If the sentencing court notifies the offender at the sentencing hearing that a prison term is mandatory but the sentencing entry does not specify that the prison term is mandatory, the court may complete a corrected journal entry and send copies of the corrected entry to the offender and the department of rehabilitation and correction, or, at the request of the state, the court shall complete a corrected journal entry and send copies of the corrected entry to the offender and department of rehabilitation and correction.”

State v. Rasul, 8th Dist. Cuyahoga No. 101625, 2016-Ohio-200, ¶ 19, quoting R.C. 2929.19(B)(7); *see also State v. McFarland*, 7th Dist. Mahoning No. 15 MA 17, 2015-Ohio-4839, ¶ 22-23, citing *State v. Benitez-Maranon*, 9th Dist. Summit Nos. 26461 and 26659, 2014-Ohio-3575, and *State v. Ware*, 141 Ohio St.3d 160, 2014-Ohio-5201, 22 N.E.3d 1082, ¶ 10. Therefore, the proper remedy where the court fails to provide R.C. 2929.19(B)(2) notification in its sentencing entry is to remand the matter to the trial court with instructions to provide a corrected entry. *Id.* at ¶ 20.

{¶9} Here, the record shows that the trial court reminded El at the sentencing hearing that he pleaded guilty to “driving while under the influence in Count 1, which alleges a furthermore [specification], that within six years you had previously been convicted of, or [pleaded] guilty to three violations of various driving under the influence charges” and this offense is a felony of the fourth degree. And in discussing the level of the offense, the court clarified that Count 1 was a “low-tier” felony in this matter, which

lowered the local sanction to be imposed from 120 days to 60 days local incarceration. Finally, in imposing sentence, the court stated, “And I’m going to give you seven months at [Lorain Correctional Institution]. * * * [Y]ou had to do a mandatory 60 days, with optional, additional 6 to 30 months. I could have given you 31 months, but I’m giving you 7 months.”

{¶10} In light of the foregoing, we acknowledge El’s argument that the trial court failed to specifically reference the furthermore specification and the sentence imposed for the specification in the sentencing entry as required by R.C. 2929.19(B)(2)(b). The court also neglected to state that a portion of his sentence was mandatory, as required by the further specification. However, the court notified El at the sentencing hearing of his offense, the furthermore specification regarding his prior convictions, and the imposed sentence for the offense as well as the specification, including the advisement of a mandatory prison term. The proper remedy, therefore, is to remand the matter to the trial court to provide the R.C. 2929.19(B)(2)(b) notification in a nunc pro tunc sentencing journal entry. Because El’s remedy is limited to providing a corrected journal entry, and the error does not affect the validity of the sentence imposed, El cannot establish prejudice. *Rasul* at ¶ 20. The error is therefore harmless.

{¶11} El’s first assignment of error has merit only to the extent that the matter will be remanded for a nunc pro tunc sentencing entry to also include the furthermore specification, its section reference, and the mandatory prison term required by the furthermore specification.

{¶12} In his second assignment of error, El argues that the trial court erred in failing to inform him of his right to appeal his conviction, in violation of Crim.R. 32(B). Although we acknowledge that the record in this case is devoid of any advisement of El's appellate rights under Crim.R. 32, we find the error to be harmless.

{¶13} Here, this court granted El's pro se motion to file a delayed appeal and subsequently appointed counsel to represent him in the appeal. El was therefore able to effect a timely appeal through counsel. Moreover, El has failed to demonstrate any prejudice resulting from the trial court's error. Any omission by the trial court regarding notification of El's right to appeal his conviction is therefore harmless. *State v. Thomas*, 8th Dist. Cuyahoga No. 94788, 2011-Ohio-214, ¶ 38; *State v. Bauldwin*, 8th Dist. Cuyahoga No. 96703, 2011-Ohio-6435, ¶ 14.

{¶14} El's second assignment of error is overruled.

{¶15} To the extent El contends that the trial court's "cumulative errors" require reversal, we find no merit.

{¶16} Under the doctrine of cumulative error, a conviction will be reversed when the cumulative effect of errors in a trial deprives a defendant of the constitutional right to a fair trial even though each of the errors does not individually constitute cause for reversal. *State v. Garner*, 74 Ohio St.3d 49, 64, 656 N.E.2d 623 (1995). The doctrine of cumulative error, however, does not apply "when the alleged errors are found to be harmless or nonexistent." *State v. Allen*, 8th Dist. Cuyahoga No. 102385,

2016-Ohio-102, ¶ 53, citing *State v. Brown*, 100 Ohio St.3d 51, 2003-Ohio-5059, 796 N.E.2d 506, ¶ 48.

{¶17} Because this court has found El’s arguments concerning both assignments of error “harmless or nonexistent,” the cumulative error doctrine is inapplicable.

{¶18} Judgment affirmed and remanded solely for the trial court to issue a nunc pro tunc sentencing journal entry in compliance with R.C. 2929.19(B)(2)(b) and consistent with this opinion.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

TIM McCORMACK, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
PATRICIA ANN BLACKMON, J., CONCUR