

[Cite as *State v. Cowan*, 2018-Ohio-1097.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 106074**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**CRAIG A. COWAN**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
REVERSED AND REMANDED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-11-550536-A

**BEFORE:** Laster Mays, J., E.T. Gallagher, P.J., and Blackmon, J.

**RELEASED AND JOURNALIZED:** March 22, 2018

## **ATTORNEY FOR APPELLANT**

Kelly M. Zacharias  
5446 Pearl Road  
Parma, Ohio 44129

## **ATTORNEYS FOR APPELLEE**

Michael C. O'Malley  
Cuyahoga County Prosecutor

By: Daniel T. Van  
Assistant County Prosecutor  
Justice Center, 9th Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant, Craig A. Cowan (“Cowan”), appeals the trial court’s issuance of a journal entry that was not consistent with the findings made on the record. The state, pursuant to Loc.App.R. 16(B), concedes the error. We reverse and remand to the trial court for issuance of a nunc pro tunc entry.

{¶2} Cowan has appealed to this court regarding Cuyahoga C.P. No. CR-11-550536-A on six different occasions. Cowan’s most recent appeal, *State v. Cowan*, 8th Dist. Cuyahoga No. 103855, 2016-Ohio-8045, ¶ 19, was remanded to the trial court to correct the sentencing journal entry to reflect the correct level of the felonies of his convictions, and to advise him of his correct number of years he would be subject to postrelease control. On July 19, 2017, the trial court held a hearing pursuant to the remand of this court. The state addressed the trial court as follows:

STATE: No, Your Honor. That is a correct summary and recitation of the remand from the Eighth District Court of Appeals. Specifically, that journal entries should reflect that Mr. Cowan was convicted of felonies of the second degree and as such he is subject to a mandatory term of post-release control for three years.

(Tr. 3-4.)

{¶3} The trial court stated that Cowan had been sentenced to an 18-year prison term, had several appeals and the last appeal resulted in a reversal that brought him before the trial court on that date. The trial court went on to state that its purpose was to correct the sentencing entry to reflect the accurate felony degrees. The trial court stated:

COURT: So Mr. Cowan, you were convicted for felonious assault under Revised Code 2903.11(A)(2). This is a second-degree felony.

\* \* \*

Conviction for discharging a firearm on or near prohibited premises under Revised Code 2923.162(A)(3) is a third-degree felony.

(Tr. 6.) However, the trial court corrected the felonious assault offense but did not correct the discharging a firearm on or near prohibited premises offense on the journal entry that was journalized on July 20, 2017.

{¶4} It is from that journal entry that Cowan appeals to this court. Cowan asserts one assignment of error for our review:

I. The trial court erred in issuing a journal entry that was not consistent with the findings made on the record.

{¶5} Cowan requests an order from this court requiring the trial court to correct the journal entry to reflect the accurate felony level for discharging a firearm on or near prohibited premises. The record should reflect a felony of the third-degree and not as felony of the first-degree. The state has conceded and we agree that the trial court stated, at the resentencing

hearing, that discharging a firearm on or near prohibited premises in violation of R.C. 2923.162(A)(3) is a third-degree felony. We find that the proper way to correct this error is through a nunc pro tunc entry. In *State ex rel. Townsend v. Calabrese*, 8th Dist. Cuyahoga No. 97822, 2012-Ohio-1649, ¶ 6, this court stated that “[n]unc pro tunc orders may be used only to correct authentic clerical errors and not to effect what the judge intended to do or should have done \* \* \*.” A nunc pro tunc entry does not replace the original judgment entry; it relates back to the original entry. *State v. Bonnell*, 8th Dist. Cuyahoga No. 102630, 2015-Ohio-4590, ¶ 14.

{¶6} This court has also stated:

In *Scaglione v. Saridakis*, 8th Dist. Cuyahoga No. 91490, 2009-Ohio-4702, this court reiterated the longstanding rule of the use of nunc pro tunc as follows: “A nunc pro tunc order may be issued by a trial court, as an exercise of its inherent power, to make its record speak the truth. It is used to record that which the trial court did, but which has not been recorded. It is an order issued now, which has the same legal force and effect as if it had been issued at an earlier time, when it ought to have been issued. Thus, the effect of a nunc pro tunc order is limited to memorializing what the trial court actually did at an earlier point in time. It can be used to supply information which existed but was not recorded, to correct mathematical calculations, and to correct typographical or clerical errors. A nunc pro tunc order cannot be used to supply omitted action, or to indicate what the court might or should have decided, or what the trial court intended to decide. Its proper use is limited to what the trial court actually did decide.” *Id.* at ¶ 9, quoting *State v. Greulich*, 61 Ohio App.3d 22, 24-25, 572 N.E.2d 132 (9th Dist.1988).

*Alden v. FirstEnergy Corp.*, 8th Dist. Cuyahoga No. 100575, 2014-Ohio-3235, ¶ 10.

{¶7} Therefore, we find that the trial court's July 19, 2017 order shall be corrected to reflect the felony level for the offense of discharging a firearm on or near prohibited premises as a third-degree felony. This trial court's judgment is reversed and remanded for further proceedings.

{¶8} Cowan's single assignment of error is sustained.

{¶9} This case is reversed and remanded to the trial court for correction of the sentencing journal entry.

It is ordered that appellant recover from appellee 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.

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

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ANITA LASTER MAYS, JUDGE

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