

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23317
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2005-CR-4213
v.	:	
	:	(Criminal Appeal from
PETER W. ROACH	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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**OPINION**

Rendered on the 19<sup>th</sup> day of February, 2010.

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MATHIAS H. HECK, JR., by R. LYNN NOTHSTINE, Atty. Reg. #0061560,  
Montgomery County Prosecutor's Office, Appellate Division, Montgomery County  
Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422  
Attorney for Plaintiff-Appellee

GLEN H. DEWAR, Atty. Reg. #0042077, Law Office of the Public Defender, 117  
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Attorney for Defendant-Appellant

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BROGAN, J.

{¶ 1} Peter Roach appeals from his convictions of complicity to commit aggravated robbery, aggravated burglary, and felonious assault with gun specifications and tampering with evidence. The trial court imposed a lengthy

sentence upon Roach which is reflected in the sentencing entry. The trial court ordered that Roach pay \$14,036 in restitution, but the entry did not include the restitution order. On February 9, 2009, the trial court issued an amended restitution order requiring Roach to pay \$26,897.36 in restitution and made the order “nunc pro tunc” to May 22, 2006. This appeal followed.

{¶ 2} In a single assignment, Roach contends the trial court improperly increased the restitution amount “nunc pro tunc” because the order does not comport with the trial court’s oral record at sentencing. The State concedes that the trial court erred in using a nunc pro tunc entry to change the amount originally ordered in restitution on the prior occasion in May 2006.

{¶ 3} Crim.R. 36(A) permits trial courts to correct clerical mistakes in judgments or orders arising from oversight or omissions, using a nunc pro tunc entry.

*State v. Arnold*, Mont. App. No. 22856, 2009-Ohio-3636, at ¶ 56. “The purpose of nunc pro tunc orders, however, is to officially record actions that were **actually taken**, but not duly recorded.” *Id.*, citation omitted. “The term ‘clerical mistake’ refers to a mistake or omission, mechanical in nature and apparent on the record, which does not involve a legal decision or judgment. \* \* \* Thus, the power to file an entry nunc pro tunc is restricted to placing on the record a judicial action that has already been taken but was omitted due to some mechanical mistake.” *Id.*, at ¶ 57.

{¶ 4} Here, the record of the sentencing hearing shows the trial court ordered restitution in the amount of \$14,036, but that order was omitted from the court’s original judgment entry. (Tr. 4; Termination Entry, 5/23/06.) The omission of the court’s restitution order in the sentencing entry is an error that may be corrected by

way of a nunc pro tunc entry. *Arnold*, supra. However, the nunc pro tunc entry must place on the record the action that the trial court took in May of 2006 when Roach was sentenced. Thus, the February 2009 entry should have reflected the restitution amount ordered at that time.

{¶ 5} The appellant's assignment of error is Sustained. The judgment of the trial court is **Reversed** and **Remanded** for further proceedings. The trial court is **Ordered** to issue an amended termination entry ordering Roach to pay restitution in the amount of \$14,036.

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DONOVAN, P.J., and GRADY, J., concur.

Copies mailed to:

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Hon. A. J. Wagner