

[Cite as *State v. Davis*, 2015-Ohio-1041.]

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

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 26216
	:	
v.	:	T.C. NO. 13-CR-3168
	:	
DARYL L. DAVIS	:	(Criminal appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 20th day of March, 2015.

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DONOVAN, J.

{¶ 1} Defendant-appellant Daryl L. Davis appeals his conviction and sentence for one count of robbery (physical harm), in violation of R.C. 2911.02(A)(2), a felony of the second degree. Davis filed a delayed notice of appeal on May 9, 2014, which we subsequently allowed in an entry issued on July 14, 2014.

{¶ 2} On November 5, 2013, Davis was indicted for one count of robbery (physical harm), in violation of R.C. 2911.02(A)(2), a felony of the second degree. At his arraignment on November 7, 2013, Davis stood mute, and the trial court entered a plea of not guilty on his behalf. Davis filed a motion to suppress on November 20, 2013. Before the trial court could conduct a hearing, however, Davis requested that he be appointed new counsel. The trial court granted Davis' request, and new counsel was appointed on December 19, 2013.

{¶ 3} In exchange for the State's agreement to a mandatory sentence of two years in prison, Davis pled guilty to the charged offense on January 16, 2014. On January 22, 2014, Davis filed a motion to withdraw his plea which the trial court subsequently granted on February 5, 2014. On February 6, 2014, the trial court held a hearing on Davis' original motion to suppress. The trial court issued a written decision overruling Davis' motion to suppress on February 7, 2014.

{¶ 4} On March 17, 2014, Davis pled guilty to second-degree felony robbery in exchange for the State's recommendation of a mandatory two-year sentence in prison. Davis also received an additional sentence of 161 days in prison for his violation of post-release control in a separate case. Upon accepting his guilty plea, the trial court proceeded directly to sentencing in accordance with the plea agreement.

{¶ 5} On the same day, the trial court filed a judgment entry of conviction which incorrectly stated that Davis had pled guilty to "ROBBERY (PHYSICAL HARM) – 2911.02(A)(3)(F3)." (Emphasis added). Upon realizing its mistake, the trial court filed an amended judgment entry of conviction on March 27, 2014, which correctly reflected the charge to which Davis pled, namely "ROBBERY (PHYSICAL HARM) –

2911.02(A)(2)(F2).” (Emphasis added).

{¶ 6} It is from this judgment that Davis now appeals.

{¶ 7} Davis’ sole assignment of error is as follows:

{¶ 8} “THE TRIAL COURT ERRED IN SENTENCING APPELLANT FOR A FELONY OF THE SECOND DEGREE.”

{¶ 9} In his sole assignment, Davis contends that the first judgment entry of conviction is only sufficient to convict him of third-degree felony robbery. Therefore, Davis asserts that he is entitled to be sentenced to the minimum term for a third-degree felony robbery. In the alternative, Davis argues that he is entitled to a remand so that the trial court can correct the judgment entry of conviction to reflect that he was convicted and sentenced for second-degree robbery. However, Davis’ arguments are without merit because the trial court already corrected the judgment entry of conviction to reflect that he pled guilty to a robbery, in violation of R.C. 2911.02(A)(2), *a felony of the second degree*.

{¶ 10} Crim. R. 36(A) permits trial courts, in their discretion, to correct clerical mistakes in judgments or orders arising from oversight or omissions, using a nunc pro tunc entry. The purpose of nunc pro tunc orders, however, is to officially record actions that were actually taken, but not duly recorded. *State v. Arnold*, 189 Ohio App.3d 238, 2009-Ohio-3636, 938 N.E.2d 45, ¶ 56 (2d Dist.). “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. “[N]unc pro tunc entries are limited in proper use to reflecting what the court actually decided, not what the court might

or should have decided or what the court intended to decide.” *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 164, 656 N.E.2d 1288 (1995).

{¶ 11} In the instant case, it is undisputed that the judgment entry of conviction filed by the trial court incorrectly stated that Davis pled guilty to third-degree felony robbery. The record, however, clearly establishes that Davis was originally indicted for, and ultimately, pled guilty to a second-degree felony robbery. During Davis’ plea hearing, the trial court made the following inquiries:

Trial Court: Okay. And you understand that you’re pleading guilty to a second degree felony in this case?

Davis: Yes, ma’am.

Trial Court: And, Mr. Davis, as to the charge against you, robbery with physical harm, being a felony of the second degree in violation of Revised Code Section 2911.02(A)(2), how do you plead?

Davis: Guilty.

Furthermore, the waiver and plea form acknowledged and signed by Davis state clearly that he was pleading guilty to a second degree felony, in violation of R.C. 2911.02(A)(2). After Davis pled guilty, the trial court accepted his plea and proceeded directly to sentencing.

{¶ 12} As previously stated, in the original judgment entry of conviction filed on March 17, 2014, the trial court incorrectly stated that Davis had pled guilty to “ROBBERY (PHYSICAL HARM) – 2911.02(A)(3)(F3).” (Emphasis added). Upon realizing its mistake, the trial court filed an amended judgment entry of conviction on March 27, 2014,

which correctly reflected the charge to which Davis pled, namely “ROBBERY (PHYSICAL HARM) – 2911.02(A)(2)(F2).” (Emphasis added). The trial court clearly retained jurisdiction for the sole purpose of correcting a clerical error in the original entry, and the court properly exercised that jurisdiction.

{¶ 13} Davis’ sole assignment of error is overruled.

{¶ 14} Davis’ sole assignment of error having been overruled, the judgment of the trial court is affirmed.

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FROELICH, P.J., and WELBAUM, J., concur.

Copies mailed to:

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