[Cite as *State v. Snowden*, 2015-Ohio-1049.]

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

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 26329
	:	
v.	:	T.C. NO. 09CR2683/1
	:	
TERRENCE SNOWDEN	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

. . . . . .

O P I N I O N

Rendered on the 20th day of March, 2015.

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Defendant-Appellant

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FROELICH, P.J.

{¶ 1} Terrence Snowden appeals from a judgment of the Montgomery County Court of Common Pleas, which amended the judgment entry in his criminal case, in

response to a remand from this court in Snowden's prior appeal, and reimposed consecutive sentences.

{¶ 2} Following a jury trial in April 2013, Snowden was found guilty of four counts of murder, each with a firearm specification, and two counts of having weapons while under disability. After merger of some of the offenses, Snowden was sentenced on two counts of murder, the firearm specifications, and two counts of having weapons while under disability. The trial court imposed an aggregate sentence of 36 years to life in prison.

{¶ 3} Snowden appealed from his conviction, and one of his arguments on appeal related to the consecutive nature of his sentences. *State v. Snowden*, 2d Dist. Montgomery No. 25758, 2014-Ohio-2299. Snowden argued that the trial court had failed to make any findings pursuant to R.C. 2929.14 before imposing consecutive sentences. The State conceded the error and, after reviewing the record, we agreed that the trial court failed to make the findings required by R.C. 2929.14(C). We remanded for the trial court to make such findings. *Snowden* at ¶ 19. On remand, the trial court made the necessary findings at the resentencing hearing, but it did not incorporate those findings into its "Amended Nunc Pro Tunc 4/10/13 Termination Entry."

{¶ 4} Snowden filed a notice of appeal from the amended entry, and appellate counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), stating that he was "unable to find any meritorious issues for appeal"; counsel also moved the court for leave to withdraw from any further representation of Snowden. Snowden was advised of his counsel's filing of an *Anders* brief and that he could file a pro se brief assigning any additional errors for review by this court. Snowden filed a pro se brief. The case is now before us for our independent review of the record.

Penson v. Ohio, 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988).

{¶ 5} Appellate counsel's brief raises one potential assignment of error. The proposed assignment relates to the imposition of consecutive sentences; counsel has concluded, however, that this assignment of error is not arguably meritorious. Snowden's pro se brief also challenges the imposition of consecutive sentences; additionally, it challenges the finality of the court's April 2013 judgment entry, based on the configuration of the electronic signature and that judgment's alleged failure to properly state the manner of conviction.

Resentencing to Consecutive Sentences

{¶ 6} Snowden argues, as he did in his prior appeal, that the trial court erred in imposing consecutive sentences, because it did not make the appropriate findings.

{¶ 7} On remand following the prior appeal, the trial court held a resentencing hearing at which it made the following findings:

> * * * I additionally find that the consecutive sentences are necessary to protect the public from further crime and that the consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public with specific findings that at least two of the multiple offenses were committed as part of one or more courses of conduct and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflect [sic] the seriousness of the offender's conduct.
>
> Basically, you killed two people and I believe that you should serve a

> separate sentence for each one. There were also other people there who also could have been harmed during that time * * *.
>
> And also that the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. Before this offense, you had four prior felonies including a carrying concealed weapon and an aggravated robbery as well as two drug offenses.

{¶ 8} The court did not reiterate the bases for the consecutive sentences in its July 7, 2014 judgment entry; rather, the judgment cited to "the reasons stated on record."

{¶ 9} As we stated in our previous Opinion in this case, Ohio law requires judicial fact-finding prior to the imposition of consecutive sentences. The court must find that the consecutive service is necessary to protect the public from future crime or to punish the offender and that such sentences are not disproportionate to the offender's conduct or the danger the offender posed to the public. *Snowden* at ¶ 18; R.C. 2929.14(C)(4). Additionally, the court must find one of the following:

> (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
>
> (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses

> of conduct adequately reflects the seriousness of the offender's conduct.
>
> (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

Id.; R.C. 2929.14(C)(4).

{¶ 10} The trial court's statements at the resentencing hearing satisfied the requirements of R.C. 2929.14(C) for the imposition of consecutive sentences. However, these findings were not incorporated into the trial court's judgment. The supreme court has addressed this situation, as follows:

> On appeals involving the imposition of consecutive sentences, R.C. 2953.08(G)(2)(a) directs the appellate court "to review the record, including the findings underlying the sentence" and to modify or vacate the sentence "if it clearly and convincingly finds * * * [t]hat the record does not support the sentencing court's findings under division * * * (C)(4) of section 2929.14 * * * of the Revised Code." But that statute does not specify where the findings are to be made. Thus, the record must contain a basis upon which a reviewing court can determine that the trial court made the findings required by R.C. 2929.14(C)(4) before it imposed consecutive sentences.
>
> When imposing consecutive sentences, a trial court must state the required findings as part of the sentencing hearing, and by doing so it affords notice to the offender and to defense counsel. *See* Crim.R. 32(A)(4). And because a court speaks through its journal, * * * the court should also incorporate its statutory findings into the sentencing entry. However, a

> word-for-word recitation of the language of the statute is not required, and as long as the reviewing court can discern that the trial court engaged in the correct analysis and can determine that the record contains evidence to support the findings, consecutive sentences should be upheld.
>
> ***A trial court's inadvertent failure to incorporate the statutory findings in the sentencing entry after properly making those findings at the sentencing hearing does not render the sentence contrary to law; rather, such a clerical mistake may be corrected by the court through a nunc pro tunc entry to reflect what actually occurred in open court.*** * * * But a nunc pro tunc entry cannot cure the failure to make the required findings at the time of imposing sentence. * * *
>
> And a sentencing entry that is corrected by a nunc pro tunc entry incorporating findings stated on the record at the sentencing hearing does not extend the time for filing an appeal from the original judgment of conviction and does not create a new final, appealable order.

(Emphasis added.) *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 28-31.

{¶ 11} In Snowden's case, the trial court made findings at the resentencing hearing which adequately supported its imposition of consecutive sentences, but it failed to include those finding in its termination entry, except to reference the "reasons stated on record." According to *Bonnell*, such an omission may be corrected through a nunc pro tunc entry incorporating the findings stated on the record at the sentencing hearing.

{¶ 12} Snowden's appellate counsel states in his brief that "it appears that

Bonnell does not require a full recitation of the statutory findings be made in the sentencing entry as long as it took place at the sentencing hearing," although he allows that "it might be a better practice to do so." We disagree, in part, with this interpretation of *Bonnell*; we read the case to require that such findings be included in the judgment entry, although "word-for-word recitation" of the statute is not required. *Id*. at ¶ 29. *Bonnell* does state, however, that the omission of such findings from the judgment entry may be corrected through a nunc pro tunc entry, without any other additional proceedings, *as long as* it is apparent that the necessary findings were made by the trial court at the sentencing hearing.

{¶ 13} The trial court's reference to the "reasons stated" at the sentencing hearing was insufficient to incorporate its statutory findings into the judgment entry, as required by *Bonnell*. Accordingly, we will remand this matter to the trial court for the correction of the judgment entry through a nunc pro tunc entry.

{¶ 14} "A court's use of a nunc pro tunc judgment entry, which means 'now for then,' indicates its intent that the judgment have legal effect from an earlier date. [*In re Cook's Estate,* 19 Ohio St.2d 121, 127, 249 N.E.2d 799 (1969)]; Garner, A Dictionary of Modern Legal Usage (1987), 383–384. Nunc pro tunc entries are limited in proper use, however, to reflecting what the court actually decided but failed to properly include in its judgment, 'its sole function being that of correcting a clerical error in the execution of a ministerial act.' *Helle v. Public Utilities Commission* (1928), 118 Ohio St. 435, 439; *Webb v. Western Res. Bond & Share Co.* (1926), 115 Ohio St. 247, 256." *State v. Ritchie*, 2d Dist. Montgomery No. 24088, 2011-Ohio-2566, ¶ 8.

Electronic Signature and Manner of Conviction

{¶ 15} Snowden raises two additional arguments in his pro se brief. The first argument relates to an alleged absence of the judge's signature on the original, April 18, 2013, judgment entry. Snowden argues that the judge's electronic signature, which appears on a separate page than the (blank) signature line at the end of the text, violates the "single document" requirement set forth in *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163. He also argues that the 2013 judgment entry was "non-final" because it did not clearly state the manner of his conviction; some charges were tried to the court, while others were tried to the jury, and the April 2013 judgment did not clearly state the manner in which each count was resolved.

{¶ 16} Both of these arguments could have been raised by Snowden in his direct appeal, but they were not. "Under the doctrine of res judicata, a final judgment of conviction bars the convicted defendant from raising and litigating in any proceeding, except an appeal from that judgment, any defense or claimed lack of due process that was raised or could have been raised by the defendant at the trial which resulted in that judgment of conviction or on an appeal from that judgment." *State v. Perry,* 10 Ohio St.2d 175, 180, 226 N.E.2d 104 (1967). Snowden may not raise, in this appeal, issues that are unrelated to the proper imposition of consecutive sentences, for which we remanded his case previously. Further, Snowden's argument ignores the fact that the trial court issued a nunc pro tunc entry in July 2013, which clarified the manner of conviction as to each of the offenses.

{¶ 17} We have addressed the issues raised by appellate counsel and by Snowden, and we have found only a ministerial error, which we will order the trial court to correct. We have conducted an independent review of the record and have found no

other errors having arguable merit. *Penson*, 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 18} The trial court judgment will be affirmed, and this matter will be remanded to the trial court for the issuance of a nunc pro tunc entry which incorporates into the judgment entry the trial court's findings that were made at the sentencing hearing with respect to the imposition of consecutive sentences. We note that the trial court's issuance of such an amended judgment entry "is not a new final order from which a new appeal may be taken." *Bonnell* at ¶ 31.

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DONOVAN, J. and WELBAUM, J., concur.

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