

[Cite as *State v. Smith*, 2015-Ohio-700.]

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

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 26217
	:	
v.	:	T.C. NO. 12CR1650/1
	:	
DONALD SMITH	:	(Criminal appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 27th day of February, 2015.

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MICHELE D. PHIPPS, Atty, Reg. No. 0069829, Assistant Prosecuting Attorney, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

WILLIAM O. CASS, JR., Atty. Reg. No. 0034517, 135 W. Dorothy Lane, Suite 209, Kettering, Ohio 45429
Attorney for Defendant-Appellant

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DONOVAN, J.

{¶ 1} Defendant-appellant Donald Smith appeals his conviction and sentence for one count of aggravated possession of drugs, in violation of R.C. 2925.11(A), a felony of

the first degree, and two counts of aggravated trafficking in drugs, in violation of R.C. 2925.03(A)(2), both felonies of the first degree. Smith filed a timely notice of appeal with this Court on May 12, 2014.

{¶ 2} On March 19, 2013, Smith was indicted for two counts of aggravated possession of drugs, both felonies of the first degree; one count of aggravated possession of drugs, a felony of the second degree; one count of aggravated possession of drugs, a felony of the third degree; three counts of aggravated trafficking in drugs, all felonies of the first degree; one count of aggravated trafficking in drugs, a felony of the second degree; and three counts of aggravated trafficking in drugs, all felonies of the third degree.

{¶ 3} On April 4, 2014, Smith pled guilty to one count of aggravated possession of drugs and two counts of aggravated trafficking in drugs. On April 30, 2014, the trial court sentenced Smith to three years on each of the three counts and ordered that the sentences be served concurrently, for an aggregate sentence of three years in prison. Additionally, the trial court orally suspended Smith's driver's license for six months on each of the three counts, and ordered that the suspensions be served consecutively for a total of eighteen months.

{¶ 4} On the same day, the trial court filed Smith's judgment entry of conviction. The judgment entry reflected Smith's prison sentence, but contained no mention of his driver's license suspensions. As previously noted, Smith filed a timely notice of appeal on May 12, 2014. On May 15, 2014, the trial court filed an amended judgment entry of conviction correcting the Ohio Revised Code Section for aggravated trafficking in drugs. The amended judgment entry of conviction also did not contain the driver's license

suspensions orally imposed by the trial court at Smith's sentencing hearing.

{¶ 5} Smith's appeal is now properly before us.

{¶ 6} Smith's sole assignment of error is as follows:

{¶ 7} "THE COURT ERRED WHEN IT RAN THE THREE MANDATORY LICENSE SUSPENSIONS CONSECUTIVELY TO EACH OTHER."

{¶ 8} In his sole assignment, Smith argues that the trial court erred when it ordered him to serve the three mandatory license suspensions consecutive to each other. Upon review, however, we do not reach the merits of Smith's argument because of the trial court's failure to include the mandatory driver's license suspensions in the judgment entry of conviction.¹

{¶ 9} R.C. 2925.03(D)(2) and R.C. 2925.11(E)(2) mandate the driver's license suspension of an offender who is convicted of or pleads guilty to a violation of aggravated trafficking in drugs and/or aggravated possession of drugs. Accordingly, a driver's license suspension is required by law to be part of an offender's sentence. *State v. Harris*, 132 Ohio St.3d 318, 2012-Ohio-1908, 972 N.E.2d 509. If a trial court fails to include the mandatory term, the executive branch is unable to impose a driver's license suspension once an offender leaves prison. *State v. Joseph*, 125 Ohio St.3d 76, 2010-Ohio-954, 926 N.E.2d 278, at ¶ 17. Because a mandatory driver's license suspension is a statutorily mandated term, a trial court's failure to include this term in a criminal sentence renders the sentence void in part. *Harris*, at ¶ 15, citing *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332. Resentencing is limited to the imposition of the

¹ We have previously held that multiple driver's license suspensions may not be imposed consecutively. *State v. Stephens*, 2d Dist. Clark No. 2012-CA-30, 2013-Ohio-3944, ¶ 11; see also, *State v. Phinizee*, 2d Dist. Clark No. 95-CA-54, 1996 WL 391722 (July 5, 1996).

mandatory driver's license suspension. *Harris*, at ¶ 18.

{¶ 10} In the instant case, our review of the record reveals that the trial court did, in fact, orally impose the mandated license suspensions at the sentencing hearing. Nevertheless, this part of Smith's sentence was omitted from the final judgment entry. While the omission may have been inadvertent, it is well established that a court speaks only through its journal entries, not through its oral pronouncements. *Kaine v. Marion Prison Warden*, 88 Ohio St.3d 454, 455, 727 N.E.2d 907 (2000); *Andrews v. Bd. Of Liquor Control*, 164 Ohio St. 275, 281, 131 N.E.2d 390 (1955). Consequently, since Smith's statutorily mandated license suspensions were completely omitted, that portion of the judgment entry is void. *Harris*, at ¶ 15. Accordingly, this matter is remanded to the trial court for resentencing limited to imposition of Smith's mandatory driver's license suspension and their journalization in the judgment entry of conviction. *Id.* at ¶ 18.

{¶ 11} Thus, the judgment of the trial is reversed in part, and this matter is remanded to the trial court for proceedings consistent with this opinion.

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HALL, J. and WELBAUM, J., concur.

Copies mailed to:

Michele D. Phipps
William O. Cass, Jr.
Hon. Barbara P. Gorman