

[Cite as *State v. Wright*, 2020-Ohio-275.]

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
HIGHLAND COUNTY

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : Case No. 19CA14  
 :  
 vs. :  
 :  
 DELANIO WRIGHT, : DECISION AND JUDGMENT ENTRY  
 :  
 :  
 Defendant-Appellant. :

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APPEARANCES:

Delanio L. Wright, pro se appellant.

Anneka P. Collins, Highland County Prosecuting Attorney, and Adam J. King, Highland County Assistant Prosecuting Attorney, Hillsboro, Ohio, for appellee.

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CRIMINAL APPEAL FROM COMMON PLEAS COURT  
DATE JOURNALIZED: 1-15-20  
ABELE, J.

{¶ 1} This is an appeal from a Highland County Common Pleas Court judgment that overruled the request of Delanio L. Wright, defendant below and appellant herein, to vacate his sentence. Appellant assigns four errors for review:

FIRST ASSIGNMENT OF ERROR:

“THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT, WHEN THE APPELLANT WAS DENIED THE RIGHT TO COUNSEL AND FORCED APPELLANT TO APPEAR WITHOUT COUNSEL AT THE SENTENCING HEARING ON JUNE 14, 2019 WHICH WAS A CRITICAL STAGE OF THE PROCEEDINGS, AND APPELLANT DID NOT WAIVE HIS RIGHT TO THE ASSISTANCES [SIC.] OF COUNSEL.”

SECOND ASSIGNMENT OF ERROR:

“THE TRIAL COURT ERRED WHEN IT FAILED TO ANSWER THE MOTION FOR TRANSCRIPTS TO THE PREJUDICE OF THE APPELLANT, WHEN IT FAILED TO INFORM THE CLERK TO TRANSCRIBE THE ORAL HEARING FOR RESENTENCING, THE APPELLANT IS WITHOUT THE TRANSCRIBED FACTS FROM THE HEARING ON JUNE 14, 2019, WHICH IS THE ROOT OF THIS APPEAL AND BY RULE APP.R. 10(B) THE RECORD SHOULD BE COMPLETE WITH TRANSCRIPT.”

THIRD ASSIGNMENT OF ERROR:

“THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT BY FAILING TO CREDIT APPELLANT WITH ALL DAYS SERVED INCARCERATED IN THE INSTANT CASE IN VIOLATION OF THE FOURTEENTH AMENDMENT RIGHT TO EQUAL PROTECTION OF THE LAW.”

FOURTH ASSIGNMENT OF ERROR:

“THE TRIAL COURT’S DECISION TO DENY THE APPELLANT MOTION IS CONTRARY TO LAW WHEN, THE APPELLANT’S 1994 JUDGMENT ENTRY OF CONVICTION AND THE 1995 JUDGMENT ENTRY OF CONVICTION HAVE TO BE READ IN CONJUNCTION TO UNDERSTAND APPELLANT’S SENTENCE IN VIOLATION OF *STATE v. BAKER*, 119 OHIO ST.3D 197 ‘ONE DOCUMENT RULE’.”

{¶ 2} This case history is taken directly from our prior decision in *State v. Wright*, 4th Dist.

Highland No. 95CA891, 1996 WL 557809:

In early 1994, appellant was indicted for trafficking in marijuana with a gun specification, Case No. 94–CR–25 and two counts of aggravated robbery with gun specifications, Case Nos. 94–CR–26 and 94–CR–27, also known as the ‘Wendy’s robbery’ and the ‘truck stop robbery,’ respectively. At his arraignment on each charge, appellant pled not guilty.

Prior to the scheduled trial on these charges, however, the prosecutor and appellant’s defense attorney engaged in plea negotiations. As a result of these negotiations, appellant

pled guilty to all charges on June 14, 1994.

Two days after his plea hearing, appellant wrote a letter to the trial court asking to withdraw his guilty pleas. The trial court denied the motion and proceeded to impose the following sentence: on the marijuana charge, appellant was sentenced to one and one-half years to be served concurrently with the following two cases; on the two robbery offenses, appellant was sentenced to consecutive five to twenty-five year terms, plus three years of actual incarceration on each firearm specification. Therefore, the total term of appellant's sentence was sixteen to fifty-six years with six years of actual incarceration.

Appellant timely appealed that judgment to this court. *See State v. Wright* (June 19, 1995), Highland App. No. 94-CA-853, unreported [1995 WL 368319]. We affirmed the trial court's decision in part and reversed in part, remanding the case for an evidentiary hearing on appellant's motion to withdraw his pleas.

On remand, the trial court conducted a thorough evidentiary hearing on appellant's motion. After hearing the testimony of appellant and his mother, and the testimony of a detective-sergeant of the Hillsboro Police Department, as well as the closing arguments of counsel, the court overruled appellant's motion to withdraw his previously entered guilty pleas. As a result of this disposition, the court reimposed its initial sentence on appellant.

*State v. Wright, supra*, at \*1.

{¶ 3} Appellant had a two-fold argument on appeal in support of his motion to withdraw his guilty plea: (1) his attorney misled him to believe that he would receive a single sentence of five to twenty-five years with all sentences to be served concurrently, and (2) he was innocent of the truck stop robbery because he was in Columbus at the time of the Highland, County incident. This court concluded, however, that the record revealed that at his plea hearing, the trial court thoroughly advised appellant about the consequences of his guilty pleas and that appellant clearly acknowledged guilt in the truck stop robbery. In addition, appellant argued that the trial court's limitation of his mother's testimony at the hearing on the motion directly conflicted with this court's order on remand to permit appellant "to explain why he entered a guilty plea originally and the nature of the evidence

that supports his claim of innocence.” This court, however, found no abuse of discretion in the trial court’s decision to exclude such testimony. Consequently, we affirmed the trial court’s judgment that overruled appellant’s motion to withdraw his three guilty pleas. *See State v. Wright, supra*, at \*6.

{¶ 4} On May 7, 2019, appellant filed a motion to vacate a void sentence. Appellant asserted that the November 3, 1995 judgment is void because the entry: (1) “has no findings that the sentence is based on or the statutes of the conviction”; and (2) “fails to state any of the jail time credit days that the court granted.” The trial court denied appellant’s motion and noted that the sentence imposed in the July 26, 1994 judgment was not affected by this court’s June 19, 1995 decision, which remanded the matter to the trial court for a hearing on appellant’s motion to withdraw his guilty plea. Thus, the trial court found that the July 26, 1994 judgment remained in effect as the sentencing entry and the trial court’s language in the November 3, 1995 entry in regard to the sentence imposed is superfluous. Thus, the trial court determined that the November 3, 1995 entry is *not* the sentencing entry and, thus, overruled appellant’s motion. In its June 25, 2019 decision, the trial court also stated that, even if one assumes that the November 3, 1995 entry controls, the entry conforms to Crim.R. 32(C) and R.C. 2505.02. Additionally, the court indicated that the November 3, 1995 entry also provides for jail-time credit. This appeal followed.

I.

{¶ 5} In his first assignment of error, appellant asserts that the trial court erred when it denied his request for counsel and “forced” him to appear at the June 14, 2019 sentencing hearing. However, as the trial court aptly observed, the June 14, 2019 hearing was *not* a sentencing hearing, but rather a hearing on appellant’s pro se motion to vacate his sentence.

{¶ 6} The Sixth Amendment right to counsel applies to critical stages of criminal proceedings. *United States v. Wade*, 388 U.S. 218, 224, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967); *see also Iowa v. Tovar*, 541 U.S. 77, 80, 124 S.Ct. 1379, 158 L.Ed.2d 209 (2004) (“The Sixth Amendment safeguards to an accused who faces incarceration the right to counsel at all critical stages of the criminal process”). In *Wade*, the court explained that “in addition to counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial.” (Footnotes omitted.) *Id.* at 226, 87 S.Ct. 1926; *see also Rothgery v. Gillespie Cty., Texas*, 554 U.S. 191, 212, 128 S.Ct. 2578, 171 L.Ed.2d 366 (2008), fn. 16 (noting that “critical stages” include proceedings between an individual and agents of the state that amount to trial-like confrontations at which counsel would help the accused in coping with legal problems or meeting the adversary). *State v. Schleiger*, 141 Ohio St.3d 67, 2014-Ohio-3970, 21 N.E.3d 1033, ¶ 13.

{¶ 7} Appellant cites *State v. Smith*, 4th Dist. Scioto No. 14CA3657, 2015-Ohio-841, to support his contention that he was entitled to the assistance of counsel at his June 14, 2019 hearing. However, *Smith* involved a resentencing hearing, not a hearing on a motion to vacate. Appellant also cites *State v. Wamsley*, 2016-Ohio-2885, 64 N.E.3d 489 (5th Dist.), which is also inapplicable as it relates to trial counsel, not at a hearing on a motion to vacate. Finally, appellant cites *State v. Mootispaw*, 4th Dist. Highland No. 09CA33, 2010-Ohio-4772, in which the trial court granted a petition for judicial release, but several months later the Adult Parole Authority alleged that the appellant violated the terms of judicial release. After Mootispaw appeared pro se at a hearing on the supervision violations and admitted to two violations, the court reinstated his prison sentence. *Id.* at

¶ 2. Here again, *Mootispaw* is irrelevant to our analysis because it involved a judicial release revocation hearing, not a hearing on a motion to vacate. In the case sub judice, because the court held the June 13, 2019 hearing to consider appellant's motion to vacate a void sentence, not to conduct a sentencing hearing or a resentencing hearing, appellant had no right to counsel.

{¶ 8} Therefore, based upon the foregoing reasons, we overrule appellant's first assignment of error.

## II.

{¶ 9} In his second assignment of error, appellant asserts that the trial court erred "when it failed to answer the motion for transcripts to the prejudice of Appellant, when it failed to inform the Clerk to transcribe the oral hearing for Resentencing, the Appellant is without the transcribed facts from the hearing on June 14, 2019, which is the root of this Appeal and by rule App.R. 10(B) the record should be complete."

{¶ 10} Once again, we point out that the June 14, 2019 hearing was not a resentencing hearing, but rather a hearing on appellant's motion to vacate a void sentence. Moreover, we observe that after appellant filed this brief, the June 13, 2019 hearing transcript was filed on October 8, 2019. Thus, this assignment of error is moot.

## III.

{¶ 11} In his third assignment of error, appellant asserts that the trial court "erred to the prejudice of the Appellant by failing to credit Appellant with all days served incarcerated in the instant case in Violation of the Fourteenth Amendment Right to Equal Protection of the Law." Appellant contends that in the November 3, 1995 entry, "the court states that appellant is awarded the days from March 5, 1994; which is an ambiguous date, but the DRC has only given 137 days,

and which the days credited should be 580 plus days.”

{¶ 12} The July 26, 1994 sentencing entry sets forth appellant’s sentences with respect to all three charges, charged in three separate cases. With respect to jail credit, the entry states: “the defendant to receive credit of 137 days as of July 20, 1994, for jailtime previously served by him, as provided by law.” The November 3, 1995 entry states: “This cause came on for further hearing on November 1, 1995, on the matter of defendant’s motion to withdraw his plea of guilty pursuant to the Court of Appeals’ decision of June 19, 1995.” The court went on to state that “[t]he Court having heard and considered the statements of counsel and the evidence adduced as to defendant’s motion to withdraw his guilty pleas, hereby overrules the same in its entirety.” The court also restated the original sentence verbatim, with one exception - with respect to jail credit, the court stated, “the defendant to receive credit for jailtime previously served by him, as provided by law, from March 5, 1994.”

{¶ 13} The gist of appellant’s argument is that the trial court failed to credit him with all days served. R.C. 2967.191 requires the Ohio Department of Rehabilitation and Correction to:

reduce the prison term of a prisoner \* \* \* by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the prisoner's competence to stand trial or sanity, and confinement while awaiting transportation to the place where the prisoner is to serve the prisoner's prison term.

{¶ 14} “Although the [department of rehabilitation and correction] has a mandatory duty pursuant to R.C. 2967.191 to credit an inmate with jail time already served, it is the trial court that makes the factual determination as to the number of days of confinement that a defendant is entitled to have credited toward his sentence.” *State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio

St.3d 476, 2003-Ohio-2061, 786 N.E.2d 1286, ¶ 7. R.C. 2949.12 and Ohio Adm.Code 5120-2-04(B) require that this information be included in the sentencing entry.

{¶ 15} Here, the trial court stated in its June 25, 2019 decision that the July 26, 1994 sentencing entry provides the amount of jail-time credit to which appellant is entitled. Further, even if the November 3, 1995 entry controlled, that entry also specifies jail-time credit.

{¶ 16} Accordingly, based upon the foregoing reasons, we overrule appellant's third assignment of error.

#### IV.

{¶ 17} In his final assignment of error, appellant asserts that the trial court's decision to deny his motion is contrary to law because the 1994 and 1995 entries must be read in conjunction to understand appellant's sentence in violation of the "one document rule" of *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163.

{¶ 18} In *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, the Supreme Court of Ohio clarified its holding in *State v. Baker, supra*, and held that a sentencing entry must include the following items in order to constitute a final appealable order: (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time-stamp indicating the entry upon the journal by the clerk. *Lester* at paragraph one of the syllabus. In addition, Crim.R. 32(C) requires that:

A judgment of conviction shall set forth the fact of conviction and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.



{¶ 19} We believe that the July 26, 1994 judgment entry satisfies the *Lester* requirements, as well as Crim.R. 32(C). As the appellee points out, that entry sets forth the statutes under which appellant was convicted, the jail-time credit to which appellant is entitled, is signed by the judge and has been filed with the clerk. Thus, the July 26, 1994 judgment entry complies with Crim.R. 32(C) and R.C. 2505.02.

{¶ 20} The July 26, 1994 judgment entry also denied appellant's oral motion to withdraw his guilty pleas. This court's decision in *State v. Wright*, 4t Dist. Highland No. 95CA891, 1996 WL 557809, reversed that portion of the judgment and remanded the matter with instructions to conduct a hearing on appellant's motion to withdraw his pleas. In spite of appellant's assertions, this court did not remand the cause for a resentencing. Indeed, the trial court conducted a November 1, 1994 hearing on appellant's motion to withdraw his guilty pleas. On November 3, 1995, the trial court overruled appellant's motion to withdraw his guilty pleas and reimposed the identical sentence. Even assuming arguendo, that the November 3, 1994 entry controls, that entry also conforms to Crim.R. 32(C) and R.C. 2505.02 in that it overrules appellant's motion to withdraw his guilty pleas, sets forth the facts of conviction, sets forth the sentence imposed, contains the judge's signature and was journalized by the clerk.

{¶ 21} Accordingly, based upon the foregoing reasons we overrule appellant's final assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed. Appellee shall recover of appellant the 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 Highland County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted by the trial court or this court, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Smith, P.J. & McFarland, J.<sup>1</sup>: Concur in Judgment & Opinion

For the Court

BY: \_\_\_\_\_  
Peter B. Abele, Judge

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<sup>1</sup>Judge Matthew W. McFarland participated in and voted on this decision before his resignation from this Court.

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.