

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

STEVEN L. CARLISLE

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 2014 AP 11 0047

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Municipal Court,
Case No. CRB 1400808A-B

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 30, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

MARK SALERNO

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Wise, J.

{¶1}. Appellant Steven L. Carlisle appeals the decision of the New Philadelphia Municipal Court, Tuscarawas County, which issued a *nunc pro tunc* judgment entry subsequent to his conviction and sentence for hunting and disposal violations under the Ohio Revised Code. Appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

{¶2}. On or about July 7, 2014, Appellant Carlisle was cited for illegal hunting of a deer under R.C. 1531.02 and OAC 1501:31–15–11(A)(1), and illegal disposal of refuse into a river under R.C. 1531.29. On July 25, 2014, appellant appeared pro se and entered guilty pleas to said citations. Appellant was found guilty as charged and was thereupon sentenced by the trial court. The sentence included a forfeiture of his rifle.

{¶3}. On October 14, 2014, the trial court issued a *nunc pro tunc* judgment entry regarding the aforesaid procedural events.

{¶4}. On November 10, 2014, appellant, with the assistance of counsel, filed a notice of appeal of the *nunc pro tunc* judgment entry. He herein raises the following five Assignments of Error:

{¶5}. “I. THE DECISION OF OCTOBER 14, 2014 WAS RENDERED WITHOUT STEVEN L. CARLISLE'S KNOWLEDGE, NOTICE, PRESENCE OR RIGHT TO BE HEARD OR GIVE TESTIMONY.

{¶6}. “II. THE DECISION OF OCTOBER 14, 2014 IS FACTUAL [SIC] INACCURATE AND DETRIMENTAL TO THE RIGHTS OF STEVEN L. CARLISLE BECAUSE IT DOES NOT REFLECT THE FINES PAID.

{¶7}. “III. THIS ORDER COULD BE CONSTRUED AS PLACING ADDITIONAL PENALTIES ON MR. CARLISLE.

{¶8}. “IV. THE DECISION OF OCTOBER 14, 2014 IS FACTUAL [SIC] INACCURATE AND DETRIMENTAL TO THE RIGHTS AND DUE PROCESS OF STEVEN L. CARLISLE BECAUSE IT DOES NOT REFLECT THE COMPLETION OF THE 60 HOURS OF COMMUNITY SERVICE AND/OR THE PAYMENT OF \$600.00, IN LIEU OF COMMUNITY SERVICE. THIS ORDER COULD BE CONSTRUED AS PLACING ADDITIONAL PENALTIES ON MR. CARLISLE.

{¶9}. “V. THE DECISION OF OCTOBER 14, 2014 EXTENDED THE LENGTH OF THE SUSPENSION RENDERED BY THREE (3) YEARS WITHOUT STEVEN L. CARLISLE'S KNOWLEDGE, NOTICE, PRESENCE, OR RIGHT TO BE HEARD OR GIVE TESTIMONY.”

I., II., III., IV., V.

{¶10}. In his five Assignments of Error, appellant presents a number of challenges to the trial court's issuance of its *nunc pro tunc* judgment entry, which occurred approximately eleven weeks after his conviction and sentence.

{¶11}. As a general rule, once a valid sentence has been executed, a trial court no longer has the power to modify the sentence except as provided by the Ohio General Assembly. See *State v. Hayes* (1993), 86 Ohio App.3d 110. One significant exception, however, is that a trial court has jurisdiction to correct clerical errors in its judgments. See *State ex rel. Cruzado*, 111 Ohio St.3d 353, 2006–Ohio–5795, 856 N.E.2d 263, ¶ 19, citing Crim.R. 36. A *nunc pro tunc* order can be used to supply information which existed but was not recorded, and to correct typographical or clerical

errors. See *Jacks v. Adamson* (1897), 56 Ohio St. 397, 47 N.E. 48. *Nunc 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* (1995), 74 Ohio St.3d 158, 164, 656 N.E.2d 1288. "Sentencing courts have been given the ability to correct omissions in sentencing entries, and are not required to call the defendant into open court upon the issuance of a *nunc pro tunc* entry where that defendant was present when the sentence was correctly imposed." *State v. Van Tielon*, 12th Dist. Brown No. CA2013–11–012, 2014-Ohio-4421, ¶ 21.

{¶12}. In the case sub judice, the record before us does not contain a transcript of the proceedings below as per App.R. 9.

{¶13}. A presumption of regularity attaches to all trial court proceedings. See, e.g., *Chari v. Vore* (2001), 91 Ohio St.3d 323, 325, 744 N.E.2d 763. Furthermore, it is well settled that when portions of the transcript necessary to resolve issues are not part of the record on appeal, we must presume regularity in the trial court proceedings and affirm. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 400 N.E.2d 384.

{¶14}. Under the circumstances of the present case, absent a transcript or some other means under the Appellate Rules to assist us in ascertaining what transpired and what was said at the plea and sentencing hearing of July 25, 2014, appellant has no grounds to overcome the presumption of regularity regarding the issuance of the *nunc pro tunc* entry, and we must presume the trial court duly acted therein to correct clerical errors or missing information in its first sentencing entry.

{¶15}. Accordingly, appellant's First, Second, Third, Fourth, and Fifth Assignments of Error are overruled.

{¶16}. For the reasons stated in the foregoing opinion, the judgment of the New Philadelphia Municipal Court, Tuscarawas County, Ohio, is hereby affirmed.

By: Wise, J.

Gwin, P. J., and

Farmer, J., concur.

JWW/d 0717