[Cite as *State v. Bates*, 2017-Ohio-585.]

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 16CA13
	:	
BRYAN BATES	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Guernsey County Court of Common Pleas, Case No. 07-CR-117
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	January 30, 2017

APPEARANCES:

For Plaintiff-Appellee:	For Defendant-Appellant:
DANIEL G. PADDEN GUERNSEY CO. PROSECUTOR 139 West 8th Street P.O. Box 640 Cambridge, OH 43725	BRYAN BATES, PRO SE #577218 P.O. Box 5500 Chillicothe, OH 45601

Delaney, J.

{¶1} Defendant-appellant Bryan Bates appeals from the June 29, 2016 Judgment Entry of the Guernsey County Court of Common Pleas granting in part and overruling in part a motion to correct sentence. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} On June 29, 2007, appellant was indicted on twelve counts of pandering sexually oriented material involving a minor in violation of R.C. 2907.322(A)(1) and thirty counts of illegal use of a minor in nudity oriented material or performance in violation of R .C. 2907.323(A)(3). The charges arose after an international investigation involving the United States and Canada into child pornography on the Internet.

{¶3} A jury found appellant guilty as charged and, by judgment entry of sentence filed April 18, 2008, the trial court sentenced appellant to an aggregate term of thirteen years in prison and classified him as a Tier II sex offender pursuant to R.C. 2950, also known as the Adam Walsh Act ("AWA").

{¶4} Appellant filed a direct appeal of his convictions. In his direct appeal, appellant challenged the denial of his motion to suppress testimony of appellee's expert in computer forensics and raised the issues of ineffective assistance of counsel, manifest weight, and sufficiency of the evidence. This Court affirmed appellant's convictions in *State v. Bates,* 5th Dist. No. 08CA15, 2009–Ohio–275 (*Bates I*).

{¶5} Appellant next appealed the trial court's decisions regarding a motion to correct sentence, motion to correct amended judgment entry, a second motion to correct sentence, a motion for reconsideration of an allied offense issue, and motion for hearing to correct the sentence. We addressed his arguments collectively in *State v. Bates,* 5th

Dist. Nos. 11–CA–000016, 11–CA000026, and 11–CA–000033, 2012–Ohio–1080 (*Bates II*). In *Bates II,* this Court affirmed all of the trial court's judgments and noted that some of the errors appellant raised were res judicata because appellant could have raised the arguments in his direct appeal. However, we addressed appellant's assignments of error regarding his sentence, finding that the judgment entries complied with Criminal Rule 32(C) and *State v. Baker,* 119 Ohio St.3d 197, 893 N.E.2d 163 (2008).

{¶6} While *Bates II* was pending, appellant filed a motion for reconsideration and to correct sentence, another motion to correct sentence, and a petition to vacate or set aside the judgment or conviction or sentence. In *State v. Bates,* 5th Dist. Nos.2012–CA–06, 2012–CA–10, 2012–Ohio–4360 (*Bates III*), we affirmed the trial court's rulings and found appellant's petition for post-conviction relief was not filed within the statutory time limitation and contained no showing the exception to the time limitation applied.

{¶7} In April of 2012, appellant filed a motion to vacate and correct his sentence based upon the Ohio Supreme Court's decision in *State v. Williams,* 129 Ohio St.3d 344, 952 N.E.2d 1108 (2011), which held that defendants whose crimes were committed prior to the AWA's enactment should have been classified according to the statutory scheme in place at the time they committed their crimes, even if they were sentenced after the enactment of the AWA. The State of Ohio agreed with appellant that the AWA, as codified in R.C. 2950, was improperly applied to appellant when he was sentenced and that appellant should be classified pursuant to the version of R .C. 2950 in effect at the time appellant committed the offenses, also known as Megan's Law. Appellant filed a second motion to vacate and correct his sentence on May 1, 2012.

{¶8} The trial court initially set appellant's motions for hearing on October 1, 2012. On August 23, 2012, the trial court granted appellant's motion for standby counsel. On August 27, 2012, appellant filed a motion for court appointed forensic expert for the sex offender classification hearing, stating this expert would provide a meaningful review and comprehensive analysis of the alleged computer evidence in question. Appellant also filed a motion for court appointed psychologist to assist in determining the recidivism factors in his case. Further, appellant filed subpoenas for multiple individuals who testified during his original trial to appear for the sex offender classification hearing. Based on the pendency of the *Bates III* appeal, the trial court continued the hearing scheduled for October 1, 2012.

{¶9} A number of motions filed by appellant and appellee culminated in a sexual-offender classification hearing on March 1, 2013, resulting in two judgment entries: 1) a judgment entry finding appellant to be a sexually-oriented offender, notifying him of his duty to register and detailing registration requirements upon release from prison, stating the length of appellant's registration requirement and including penalties for failure to register; and 2) a judgment entry stating the trial court found appellant not to be a sexual predator for the purposes of sex offender registration. Appellant appealed those judgment entries in *State v. Bates*, 5th Dist. Guernsey No. 13-CA-9, 2013-Ohio-4768, appeal not allowed, 138 Ohio St.3d 1436, 2014 -Ohio- 889, 4 N.E.3d 1052 [*Bates IV*]. We affirmed the judgments of the trial court, finding: use of the word “resentencing” in the initial entry setting hearing did not vacate appellant's entire sentence; the trial court properly granted appellant's request by reclassifying him according to the statutorily-mandated sentencing scheme (i.e. Megan's Law) in place at the time his crimes were committed; the trial court

did not err in failing to permit appellant to call witnesses at the classification hearing; the judgment entry of March 1, 2013 properly contained the notice requirements set forth in former R.C. 2950.03(B)(1); and appellant's remaining assignments of error were barred by res judicata. See, *Bates IV*, supra.

{¶10} On May 12, 2016, appellant filed a motion to correct judgment entry of sentence which the trial court granted in part and denied in part by judgment entry dated June 29, 2016.

{¶11} Appellant now appeals from the trial court's judgment entry of June 29, 2016 and raises two assignments of error:

ASSIGNMENTS OF ERROR

{¶12} "I. THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION WHEREAS, THE COURT AMENDED AND INCORPORATED TWO JUDGMENT ENTRIES WITH A VOID JUDGMENT."

{¶13} "II. THE TRIAL COURT ERRED AS A MATTER OF LAW BY AMENDING A JUDGMENT ENTRY OF SENTENCE."

ANALYSIS

I., II.

{¶14} Appellant's two assignments of error are related and will be considered together. Appellant argues the trial court erred in issuing the judgment entry of June 29, 2016 which corrects a clerical error, therefore voiding his entire sentence. We disagree.

{¶15} In its entry of June 29, 2016, the trial court affirmed appellant's motion to correct sentence in part and overruled it in part. The relevant portion of the entry states:

* * * *.

> The Court finds that the fourth paragraph of the first page of the Judgment Entry of Sentence [Pursuant to Civil Rule 60(A)] filed August 26, 2011 should be, and hereby is, AMENDED as follows:
>
> 1) In accord with sex offender hearing held pursuant to "Megan's Law," the Court found Defendant to be a "Sexually-Oriented Offender" and notified him of his duties to report once each year for a period of 10 years.
>
> 2) The Court hereby incorporates herein by reference the "Judgment Entry Following Sexual Predator Hearing" and "Judgment Entry and Notice of Duties To Register As an Offender of Sexually-Oriented Offense"—both filed March 1, 2013.
>
> * * * *.
>
> (Emphasis and brackets in original). Judgment Entry, June 29, 2016.

{¶16} The trial court therefore effectually removed the language in the August 26, 2011 entry referencing "Tier II of Chapter 2950." The judgment entry therefore brings appellant's Judgment Entry of Sentence into accord with our opinion in *Bates IV*, as noted supra.

{¶17} "[C]ourts possess inherent authority to correct clerical errors in judgment entries so that the record speaks the truth." *State ex rel. Cruzado v. Zaleski,* 111 Ohio St.3d 353, 2006–Ohio–5795, 856 N.E.2d 263, ¶ 19. The original judgment entry of sentence did not reflect the origin of the sex-offender classification as Megan's Law instead of Tier II of Chapter 2950. The entry appealed here corrected the record *at*

appellant's request. See*, State v. Clark*, 5th Dist. Stark No. 2010CA0006, 2010-Ohio-4649, citing *State v. Harrison,* 12th Dist. Butler Nos. CA2009-10-272 and CA2010-01-019, 2010-Ohio-2709; *State v. Mackey*, 5th Dist. Licking No. 10-CA-74, 2011-Ohio-2651.

{¶18} We agree with appellee's citation to our decision in *State v. Haddix*, in which we observed "* * * [appellant] has already received the benefit that he sought in his motion to resentence. We must be mindful of the " * * * elementary proposition of law that an appellant, in order to secure reversal of a judgment against him, must not only show some error but must also show that that error was prejudicial to him." *State v. Haddix*, 5th Dist. Stark No. 2012-CA-00218, 2013-Ohio-1974, ¶ 22, citing *Smith v. Flesher,* 12 Ohio St.2d 107, 233 N.E.2d 137(1967); *State v. Stanton,* 15 Ohio St.2d 215, 217, 239 N.E.2d 92, 94 (1968); *Wachovia Mtg. Corp. v. Aleshire,* 5th Dist. Licking No. 09 CA 4, 2009–Ohio–5097, ¶ 16. See, also, App.R. 12(D).

{¶19} Appellant's argument that his sentence is void is premised upon the same arguments he made in *Bates IV*. He now claims that because the trial court issued a corrective judgment entry *at his request,* which "amended" the sentence only to the extent that it demonstrates for the record that his sex offender classification arises from the version of R .C. 2950 in effect at the time he committed the offenses, i.e. "Megan's Law."

{¶20} In the instant case, however, appellant has already appealed multiple times and we found the sentence was not void but was valid. *Bates I* through *Bates IV*, supra. Appellant's latest round of arguments is thus barred not only by res judicata but also under the law of the case doctrine:

> Briefly, the doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions

> involved for all subsequent proceedings in the case at both the trial and reviewing levels.
>
> The doctrine is considered to be a rule of practice rather than a binding rule of substantive law and will not be applied so as to achieve unjust results. However, the rule is necessary to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution.
>
> *State v. Fields [VI],* 5th Dist. Muskingum No. CT2014–0025, 2014–Ohio–5233, ¶ 15, citing *Nolan v. Nolan,* 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984).

{¶21} This case represents the endless litigation censured in *Nolan,* supra. Appellant's latest round of arguments is thus barred by res judicata and the law of the case doctrine. *State v. Fields [VII]*, 5th Dist. Muskingum No. CT2015-0031, 2016-Ohio-1217, ¶ 18.

{¶22} Appellant’s two assignments of error are overruled.

CONCLUSION

{¶23} Appellant's two assignments of error are overruled and the judgment of the Guernsey County Court of Common Pleas is affirmed.

By: Delaney, J. and

Gwin, P.J.

Hoffman, J., concur.