

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-10-008

Appellee

Trial Court No. 2008CR0529

v.

Cory Mendoza aka Waltz

DECISION AND JUDGMENT

Appellant

Decided: February 6, 2013

* * * * *

Christopher F. Cowan, for appellant

* * * * *

OSOWIK, J.

{¶ 1} This matter is before the court on appellant’s application to reconsider pursuant to App.R. 26(A). Appellant asks this court to clarify our December 14, 2012 decision in which we remanded this matter for the trial court to merge appellant’s sentence for OVI with his sentences for the allied offenses of aggravated vehicular homicide and aggravated vehicular assault.

{¶ 2} As stated in *Matthews v. Matthews*, 5 Ohio App.3d 140, 450 N.E.2d 278 (10th Dist.1981), paragraph two of the syllabus, “The test generally applied upon the

filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been.”

{¶ 3} Appellant asserts that this court failed to instruct the trial court on remand that he is entitled to a de novo resentencing proceeding pursuant to the decision of the Ohio Supreme Court in *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381. In *Wilson*, the court held that when a cause is remanded to a trial court to correct an allied-offenses sentencing error, the trial court must hold a new sentencing hearing for the offenses that remain after the state selects which allied offense or offenses to pursue.

{¶ 4} Upon review, this court finds appellant’s application for reconsideration well-taken.

{¶ 5} Based on the foregoing and this court’s December 14, 2012 decision, this court vacates appellant’s sentences for OVI, aggravated homicide and aggravated vehicular assault. Accordingly, this matter is remanded to the trial court to hold a new de novo sentencing hearing for the offenses that remain after the state selects which allied offenses to pursue. In all other matters, the judgment of the trial court remains affirmed.

Application granted.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.