

[Cite as *State v. Ellington*, 2015-Ohio-601.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101404

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**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**BRANDON ELLINGTON**

DEFENDANT-APPELLEE

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**JUDGMENT:**  
REVERSED AND REMANDED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-13-580672-A

**BEFORE:** Stewart, J., Jones, P.J., and E.A. Gallagher, J.

**RELEASED AND JOURNALIZED:** February 19, 2015

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MELODY J. STEWART, J.:

{¶1} Defendant Brandon Ellington pleaded guilty to aggravated vehicular assault, a third-degree felony. The court sentenced him to one year in prison. Two days after sentencing, the court granted Ellington’s “oral” motion for resentencing, vacated his sentence and imposed a term of community control, stating that “prior to your plea there was an indication by the Court that we would afford you the terms and conditions of probation[.]” The state then filed a motion to vacate the reconsidered sentence on grounds that the court lacked authority to modify the sentence after it had been journalized. The court did not rule on the motion. The state appealed and its assignments of error contest the resentencing and the court’s failure to give it adequate notice to present relevant information at the resentencing.

{¶2} The court erred by reconsidering the one-year sentence. In *State v. Carlisle*, 131 Ohio St.3d 127, 2011-Ohio-6553, 961 N.E.2d 671, the Supreme Court held that “[a]bsent statutory authority, a trial court is generally not empowered to modify a criminal sentence by reconsidering its own final judgment.” *Id.* at ¶ 1. The rationale behind this rule is that “[o]nce a final judgment has been issued pursuant to Crim.R. 32, the trial court’s jurisdiction ends.” *State v. Gilbert*, Slip Opinion No. 2014-Ohio-4562, ¶ 9.

{¶3} Ellington maintains that the court did not reconsider the sentence; it remedied a contractual breach of the plea bargain by noting that it had indicated prior to taking the plea that it would impose community control. *Gilbert* addressed a similar kind of argument — the state sought vacation of a plea and the resentencing of a defendant who had breached the terms of his plea agreement. Finding that “[t]here must be finality to a court’s judgment,” *id.* at ¶ 3, the Supreme Court held that “[t]here is no authority for a court to revisit a sentence that has already been imposed based on a defendant’s failure to fulfill his obligations under a plea agreement.”

*Id.* In reaching this conclusion, the Supreme Court emphatically rejected the argument that a court can revisit its earlier acceptance of a plea agreement and final judgment. *Id.* at ¶ 7.

{¶4} The court first sentenced Ellington on April 18, 2014. The sentencing entry contains all of the Crim.R. 32(C) requirements for a valid final judgment in a criminal case: the judgment entry that sets forth the fact of the conviction, the sentence, the judge’s signature, and the time stamp indicating that the clerk entered the judgment in the journal. Ellington’s argument that the court was acting to enforce the terms of a plea bargain is immaterial to the question of whether the court had the authority to revisit that final judgment. *Gilbert* rejected a similar argument, and we must do so as well. We therefore sustain the first assignment of error and find that the state’s second assignment of error is moot.

{¶5} A few final words. This case highlights the inherent problems stemming from courts discussing or making agreements off-the-record. In this case, appellant states that the court promised Ellington off-the-record that he would be afforded “the terms and conditions of probation” if he pleaded guilty. Yet the court said nothing in response to the state’s representation during the plea colloquy that “[o]ther than what’s been placed on the record there have been no threats or promises made to induce this plea, Your Honor.” If promises are made by the court in order to secure a plea bargain, those promises should be acknowledged on the record.

{¶6} Judgment reversed and remanded.

This cause is reversed and remanded to the trial court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee 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 common pleas court to carry this judgment into execution.

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

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MELODY J. STEWART, JUDGE

LARRY A. JONES, SR., P.J., and  
EILEEN A. GALLAGHER, J., CONCUR