

[Cite as *State v. Lugo*, 2016-Ohio-2647.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103893

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DAVID LUGO

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED; REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-588720-A

BEFORE: E.T. Gallagher, J., Jones, A.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: April 21, 2016

ATTORNEYS FOR APPELLANT

Robert L. Tobik
Cuyahoga County Public Defender

BY: Jeffrey Gamso
Assistant Public Defender
Courthouse Square, Suite 200
310 Lakeside Avenue
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

BY: Margaret A. Troia
Assistant Prosecuting Attorney
The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, David Lugo (“Lugo”), appeals from the trial court’s imposition of court costs. He raises one assignment of error for our review:

1. The trial court committed error when it imposed costs in the journal entry of sentence after specifically waiving them in open court at the sentencing hearing.

{¶2} The state has conceded the error raised by Lugo. Our review of the record confirms that the sentencing entry includes an order of costs to be paid by Lugo, while our review of the transcript shows the trial court waived the costs.

{¶3} Although a court speaks through its journal entries, clerical errors may be corrected at any time in order to conform to the transcript of the proceedings. *State v. Steinke*, 8th Dist. Cuyahoga No. 81785, 2003-Ohio-3527, ¶ 47; Crim.R. 36. The trial courts retain continuing jurisdiction to correct these clerical errors in judgments with a nunc pro tunc entry to reflect what the court actually decided. *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 18-19.

{¶4} Therefore, because the sentencing entry is inconsistent with the court’s decision in open court to waive court costs and fees, the sentencing entry should be corrected by a nunc pro tunc entry to accurately reflect the court’s decision at the sentencing hearing. *See State v. Wilson*, 8th Dist. Cuyahoga No. 102189, 2016-Ohio-379.

{¶5} Accordingly, Lugo’s sole assigned error is sustained.

{¶6} Judgment affirmed and case remanded for the trial court to issue a nunc pro tunc entry reflecting the fact that the court waived court costs and fines.

It is ordered that appellee pay costs herein taxed. Costs waived.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

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

EILEEN T. GALLAGHER, JUDGE

LARRY A. JONES, SR., A.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR