

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 09CA009538

Appellee

v.

JAMES DIAZ

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 99CR053483

DECISION AND JOURNAL ENTRY

Dated: September 14, 2009

MOORE, Presiding Judge.

{¶1} Appellant, James Diaz, appeals from the decision of the Lorain County Court of Common Pleas. This Court vacates the trial court’s order.

I

{¶2} On March 31, 1999, Appellant, James Diaz, was indicted on two counts of complicity to escape, in violation of R.C. 2923.03/2921.34, felonies of the second degree, and one count of bribery, in violation of R.C. 2921.02, a felony of the third degree. The case proceeded to a bench trial on September 6, 2001. On September 18, 2001, the trial court convicted Diaz on one count of complicity to escape; Diaz was acquitted of the other charges. The trial court sentenced Diaz on April 16, 2002 to a two-year term of incarceration. The trial court set forth Diaz’s conviction and sentence in a “Judgment Entry of Conviction and Sentence” dated April 16, 2002. Diaz appealed the trial court’s judgment. On March 12, 2003, this Court

affirmed Diaz's conviction and sentence. See *State v. Diaz*, 9th Dist. No. 02CA008069, 2003-Ohio-1132.

{¶3} On May 7, 2003, Diaz moved the trial court for judicial release. The trial court granted his request on May 19, 2003 and placed Diaz on community control for one month. Diaz's community control sanctions were terminated on June 17, 2003.

{¶4} On January 8, 2009, the trial court amended Diaz's April 16, 2002 sentencing judgment entry nunc pro tunc, pursuant to Crim.R. 36, to specify that Diaz had been convicted by the trial court. This entry appears to have been an attempt by the court to comply with Crim.R. 32. Diaz timely appealed the trial court's nunc pro tunc entry. He has raised one assignment of error for our review.

II

ASSIGNMENT OF ERROR

“A TRIAL JUDGE CAN NOT [SIC] USE A NUNC PRO TUNC ORDER TO CORRECT AN ERROR IN A PREVIOUS ENTRY WHEN IT CHANGES THE RIGHTS OF THE DEFENDANT. A NUNC PRO TUNC ORDER IS ONLY ADMISSIBLE TO CORRECT A CLERICAL ERROR.”

{¶5} In his sole assignment of error, Diaz asserts that a trial judge cannot use a nunc pro tunc order to correct an error in a previous journal entry when it changes the rights of the defendant. He contends that a nunc pro tunc entry can only be used to correct a clerical error.

{¶6} The record reflects that Diaz completed his sentence in 2003. When a defendant has completed his sentence, there is nothing left for the court to do. See *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, at ¶18 (explaining that once an offender has completed the prison term imposed in his original sentence, he cannot be subjected to another sentencing to correct the trial court's flawed imposition of postrelease control); *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, at syllabus. As Diaz's conviction had become final upon his exhaustion of his

appellate remedies, there were no other matters for the trial court to address. *Ali v. State*, 104 Ohio St.3d 328, 2004-Ohio-6592, at ¶6. Accordingly, the trial court erred in issuing the January 8, 2009 nunc pro tunc entry.

III.

{¶7} Diaz's assignment of error is not addressed. The judgment of the trial court is vacated.

Judgment vacated.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

CARR, J.
DICKINSON, J.
CONCUR

APPEARANCES:

JAMES R. DIAZ, pro se, Appellant.

DENNIS WILL, Prosecuting Attorney, and BILLIE JO BELCHER, Assistant Prosecuting Attorney, for Appellee.