

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	No. 26AP-78
	:	(C.P.C. No. 21CR-4864)
v.	:	
	:	(REGULAR CALENDAR)
Sylvanus A. Wade,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 15, 2026

On brief: *Shayla D. Favor*, Prosecuting Attorney, and
Michael A. Walsh for appellee.

On brief: *Sylvanus A. Wade*, pro se.

APPEAL from Franklin County Court of Common Pleas
MENTEL, J.

{¶ 1} Defendant-appellant, Sylvanus A. Wade, appeals from a January 7, 2026 entry of the Franklin County Court of Common Pleas denying his motion to correct the sentencing entry. For the reasons that follow, we affirm in part and dismiss in part.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On November 19, 2021, a Franklin County Grand Jury indicted Wade on one count of felonious assault, a felony of the second degree, in violation of R.C. 2903.11; and one count of aggravated burglary, a felony of the first degree, in violation of R.C. 2911.11. Both counts included repeat violent offender specifications in violation of R.C. 2941.149(A). On March 29, 2022, Wade entered a plea of guilty, pursuant to a plea agreement, to one count of felonious assault, without the repeat violation offender specification, and burglary, without the repeat violent offender specification, a felony of the second degree, in violation

of R.C. 2911.12. The trial court accepted Wade's guilty plea and set the matter for a sentencing hearing.

{¶ 3} On September 21, 2022, the trial court held a sentencing hearing in this matter. At the conclusion of the hearing, the trial court sentenced Wade to an aggregate indefinite period of incarceration for a minimum of seven with a potential maximum of ten and one-half years. Wade failed to file an appeal.

{¶ 4} On December 3, 2025, Wade filed a "Motion to Correct Sentencing Entry." Wade asked the trial court to "issue a 'nunc pro tunc' [e]ntry in order to correct its sentence entry in this case so that the mandatory indefinite sentence satisfies the requirements of the statute pursuant to R.C. 2967.19(B) (2)(C)." (Dec. 3, 2025 Mot. at 1.) Wade sought to have the trial court " 'correct his definite sentence and issue an order to the O.D.R.C. and the bureau of sentence computation, stating that . . . Wade has the presumption of earned early release for exceptional conduct or adjustment to his incarceration, so as to satisfy the requirements of both (R.C. 2967.271 and R.C. 2967.19(B)(2)(C)." (Dec. 3, 2025 Mot. at 8.) The state filed a memorandum in opposition on December 12, 2025. A reply brief was filed on December 29, 2025.

{¶ 5} On January 7, 2026, the trial court denied Wade's motion to correct the sentencing entry.

{¶ 6} Wade filed an appeal on February 4, 2026.

II. ASSIGNMENTS OF ERROR

{¶ 7} Wade asserts the following assignments of error for our review:

1) APPELLANT ASSERTS THAT THIS FOURTEENTH AMENDMENT RIGHTS TO THE U.S. CONSTITUTION HAS BEEN VIOLATED BY THE COURT AS IT FAILED TO AFFORD THE APPELLANT WITH AN OPPORTUNITY TO BE AFFORDED ERMPT CREDIT AND THE COURT ERRED WHEN IMPOSING A MANDATORY SENTENCE UNDER OHIO REVISED CODE § 2929.19 (B) (2) (c), WHEN ONLY SEXUALLY ORIENTED OFFENDERS ARE PRIVY TO SUCH A SENTENCE OF WHICH THE APPELLANT IS NOT

2) APPELLANT ASSERTS THAT HIS EIGHTH AND FOURTEENTH AMENDMENT RIGHT TO THE U.S. CONSTITUTION HAS BEEN VIOLATED WHEN THE COURT ADJUDICATED A DISPROPORTIONATE SENTENCE IN HIS CRIMINAL MATTER OF CASE NO. 21 CR 11-4864 IN COMPARISON TO THE APPELLANT'S CO-DEFENDANTS THAT WERE CHARGED WITH THE SAME CRIME

3) APPELLANT WAS NOT AFFORDED THE GUARANTEED PROTECTIONS OF THE SIXTH AMENDMENT TO THE U.S. CONSTITUTION, AS HE WAS NOT PROVIDED EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE APPELLANT'S COUNSEL INEFFECTIVENESS IS DISPLAYED BY HIS NOT EFFECTIVELY ARGUING R.C. § 2941.25 REGARDING HIS PLEA DEAL AND HIS INEFFECTIVE COUNSEL FAILED TO ADDRESS THE DISPROPORTIONALITY OF THE APPELLANT'S SENTENCE IN COMPARISON TO HIS CO-DEFENDANTS

(Sic passim.)

III. STANDARD OF REVIEW

{¶ 8} The trial court's determination whether to correct a clerical mistake is discretionary. Crim.R. 36. As such, we review a trial court's decision whether to grant or deny a motion for a nunc pro tunc entry for an abuse of discretion. *See, e.g., State v. Thompson*, 2024-Ohio-5011, ¶ 5 (10th Dist.), citing *State v. Mitchell*, 2020-Ohio-3417, ¶ 83 (11th Dist.). An abuse of discretion implies the trial court's determination was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). Conversely, the application of res judicata is a question of law, which we review de novo. *Thompson* at ¶ 6, citing *State v. Braden*, 2018-Ohio-1807, ¶ 10 (10th Dist.).

IV. ANALYSIS

{¶ 9} For ease of discussion, we will address all of Wade's assignments of error together. In Wade's first assignment of error, he argues that the trial court erred when it failed to afford him with an opportunity to earn a reduction in his minimum term of incarceration and by imposing a mandatory sentence under R.C. 2929.19(B)(2)(c). In Wade's second and third assignments of error, he contends that the sentence was disproportionate compared to his codefendants, and that his counsel was ineffective.

{¶ 10} As a threshold matter, we must first address the timeliness of the appeal. As set forth in R.C. 2505.04, "[a]n appeal is perfected when a written notice of appeal is filed, in the case of an appeal of a final order, judgment, or decree of a court, in accordance with the Rules of Appellate Procedure." Pursuant to App.R. 4(A), a party has a right to appeal within 30 days of a final order. Upon the expiration of the 30-day period provided under App.R. 4(A), a defendant in a criminal case may file a motion for leave to file a delayed

appeal. App.R. 5(A). A motion for leave to file a delayed appeal must set forth the reasons for the defendant's failure to perfect an appeal as of right. *Id.*

{¶ 11} In the present case, Wade appeals from the trial court's January 7, 2026 entry denying his December 3, 2025 motion to correct his sentencing entry. As such, Wade failed to file a timely appeal, or any appeal for that matter, from the trial court's September 21, 2022 judgment entry. Wade has also failed to obtain leave to file an appeal through an App.R. 5(A) motion for leave to file a delayed appeal with this court. Because Wade has failed to timely appeal from the September 21, 2022 entry or obtain leave to file an appeal under App.R. 5(A), we lack jurisdiction to consider his second and third assignments of error, which are derived from his September 21, 2022 sentencing entry. *State v. Kulikowski*, 2024-Ohio-5824, ¶ 17 (10th Dist.). As such, any arguments originating from the September sentencing entry are dismissed under App.R. 4(A).

{¶ 12} Alternatively, even if we had jurisdiction to consider Wade's assignments of error regarding the purportedly disproportionate sentence and claims of ineffective assistance of counsel, Wade failed to raise either argument in his December 3, 2025 motion. "Generally, appellate courts do not consider questions not presented to the court whose judgment is sought to be reversed." *State v. Baldwin*, 2025-Ohio-398, ¶ 46 (10th Dist.). A party that fails to raise an argument with the trial court forfeits their right to raise it on appeal. *Id.*, citing *Cardinal Health 108, LLC v. Columbia Asthma & Allergy Clinic, LLC*, 2022-Ohio-2018, ¶ 13 (10th Dist.). Because Wade failed to raise arguments concerning the allegedly disproportionate sentence or ineffective assistance of counsel with the trial court, he has forfeited those arguments on appeal. *Id.*

{¶ 13} Having defined the scope of our review, we turn our attention to the trial court's denial of Wade's December 3, 2025 motion to correct sentencing entry. In a criminal matter, the trial court lacks the authority to reexamine its own valid, final judgments, with two exceptions: (1) when the sentence imposed is void, and (2) when the judgment contains a clerical mistake. *Thompson*, 2024-Ohio-5011, at ¶ 7 (10th Dist.), citing *State v. Miller*, 2010-Ohio-5705, ¶ 14.

{¶ 14} The doctrine of res judicata generally precludes a criminal defendant from litigating claims in a proceeding subsequent to the direct appeal if he or she raised, or could have raised, the issue at the trial court that resulted in that judgment of conviction or on an

appeal from that judgment. *Thompson* at ¶ 6, citing *State v. Anderson*, 2016-Ohio-1089, ¶ 7 (10th Dist.), citing *State v. Jackson*, 2014-Ohio-3707, ¶ 92; see also *State v. Barber*, 2017-Ohio-9257, ¶ 19 (10th Dist.) (“Stated differently, in criminal cases res judicata may preclude issues, arguments, or positions that could have been (even if they were not actually) litigated.”). Res judicata also precludes a defendant’s attempt to relitigate the question of whether his sentence complies with mandatory statutory provisions. *State v. Straley*, 2019-Ohio-5206, ¶ 36, citing *State ex rel. McKinney v. Schmenk*, 2017-Ohio-9183, ¶ 10-12. The Supreme Court of Ohio has found that, unless the trial court lacks jurisdiction over the subject matter, any sentencing error is voidable and must be raised on direct appeal. *State v. Henderson*, 2020-Ohio-4784, ¶ 27, 43. Here, Wade’s alleged sentencing errors constitute voidable error and are barred under res judicata as it could have been raised on direct appeal. *State v. Johnpillai*, 2023-Ohio-2745, ¶ 11 (10th Dist.).¹

{¶ 15} Wade attempts to collaterally attack his sentence through the filing of his December 3, 2025 motion seeking a nunc pro tunc entry. Crim.R. 36 provides that clerical mistakes in judgments, orders, or other parts of the record originating from oversight or omission, may be corrected by the court at any time. The Supreme Court has defined a “[c]lerical mistake” as “ ‘a mistake or omission, mechanical in nature and apparent on the record, which does not involve a legal decision or judgment.’ ” (Further citation omitted.) *State ex rel. Davis v. Janas*, 2020-Ohio-1462, ¶ 12, quoting *Miller* at ¶ 15.

{¶ 16} While Wade fashioned his motion as a request to “correct its sentence entry,” the motion, in fact, asked the trial court to find his underlying sentence was contrary to law. (Dec. 3, 2025 Mot. at 1.) Ohio courts, including this one, have found that nunc pro tunc entries are limited to clerical errors and are not intended to address substantive errors in the judgment. See, e.g., *Thompson* at ¶ 8 (concluding that the “trial court’s finding that a prison term was mandatory under R.C. 2929.13(F) is not the type of clerical mistake that a trial court can correct through a nunc pro tunc decision”); *State v. Peoples*, 2024-Ohio-1220, ¶ 8 (10th Dist.) (writing that nunc pro tunc entries “may only correct errors that are clerical and that do not involve any legal determinations”) (further citation omitted); *State v. Elkins*, 2021-Ohio-1271, ¶ 12 (10th Dist.) (“[w]hile courts possess inherent authority to

¹ Given our resolution of the second and third assignments of error, we decline to consider whether these arguments are also barred under res judicata.

correct clerical errors in judgment entries, to ensure the record ‘speaks the truth,’ a court’s use of nunc pro tunc entries is limited to reflecting what the court actually decided, not what the court might have or should have decided”); *see also State v. Yoder*, 2026-Ohio-196, ¶ 8 (5th Dist.) (finding that trial court did not err by denying appellant’s motion for a nunc pro tunc entry as he “did not ask for a clerical-error correction [under Crim.R. 36] but instead asked that the trial court shift from holding that a prison inmate serving a mandatory prison term is not eligible for any shortening of a court-imposed minimum prison term”); *State v. Richmond*, 2025-Ohio-1076, ¶ 14 (5th Dist.) (explaining that “ ‘nunc pro tunc’ entries are limited in proper use to reflecting what the court in fact decided, not what it might or should have decided or even what the court intended to decide”); *State v. Vera-Lopez*, 2024-Ohio-4971, ¶ 8 (11th Dist.) (“a nunc pro tunc entry is inappropriate when it reflects a substantive change in the judgment”).

{¶ 17} Because Wade’s motion was not proper under Crim.R. 36, the trial court rightly denied it. Wade’s first assignment of error is overruled.

V. CONCLUSION

{¶ 18} For the foregoing reasons, Wade’s first assignment of error is overruled. Wade’s second and third assignments of error are dismissed to the extent that they address arguments derived from the September 21, 2022 entry as they are untimely pursuant to App.R. 4(A). To the extent that Wade’s second and third assignments of error are preserved in the trial court’s January entry, those assignments of error are also overruled.

*Appeal dismissed in part;
judgment affirmed.*

BOGGS, P.J. and LELAND, J., concur.
