

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

DAVID HONZU,

Defendant-Appellant.

CASE NO. 2023-T-0006

Criminal Appeal from the
Court of Common Pleas

Trial Court No. 2022 CR 00561

OPINION

Decided: August 14, 2023
Judgment: Affirmed and remanded

Dennis Watkins, Trumbull County Prosecutor, and *Ryan J. Sanders*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Dennis Day Lager, 1025 Chapel Ridge, N.E., Canton, OH 44714 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} In 2011, the Ohio Attorney General's Office started the Sexual Assault Initiative (the "SAK Initiative") to test a backlog of previously untested rape kits that were languishing in various police departments and sheriff's offices around the state of Ohio. One of those rape kits, collected in 2007, was from an unsolved incident involving an unidentified assailant who kidnapped and brutally beat and raped a female victim in Warren, Ohio. As part of the SAK Initiative, the rape kit was tested. The result led to a DNA match in CODIS ("Combined DNA Index System") and identified appellant, David Honzu ("Mr. Honzu"), as the assailant, prompting the underlying case.

{¶2} Mr. Honzu appeals from the judgment entry of the Trumbull County Court of Common Pleas, which after a jury trial, with the specifications bifurcated and tried to the bench, sentenced him on three counts of kidnapping with sexual motivation, sexually violent predator (“SVP”), and repeat violent offender (“RVO”) specifications, and two counts of rape, with SVP and RVO specifications.

{¶3} Mr. Honzu raises one assignment of error, contending the trial court committed prejudicial and reversible error by sentencing him to terms of imprisonment as a SVP and RVO without rendering guilty verdicts on those specifications.

{¶4} After a thorough review of the record and pertinent law, we find Mr. Honzu’s assignment of error to be without merit. A review of the trial transcript and verdict forms reveals the trial court held a bifurcated hearing upon Mr. Honzu’s request for the court to determine the SVP and RVO specifications, at which the state presented evidence of Mr. Honzu’s prior convictions. Following the jury’s verdicts, the trial court rendered its verdicts on the SVP and RVO specifications attached to each count, finding Mr. Honzu “is” a SVP and “is” a RVO. We find no error in the trial court’s findings.

{¶5} We do, however, note clerical errors in the trial court’s “judgment on the verdict” and “entry on sentence” judgment entries. Both mistakenly indicate the jury found Mr. Honzu guilty of the RVO specifications for each count instead of the court. Because the judgment entries of conviction and sentence contain a mistake as to the manner of conviction, we remand this case and direct the trial court to issue a nunc pro tunc sentencing entry reflecting that the trial court found Mr. Honzu is a RVO on each count.

{¶6} The judgment of the Trumbull County Court of Common Pleas is affirmed and remanded for the limited purpose of issuing a nunc pro tunc sentencing entry to correct the manner of conviction on the RVO specifications.

Substantive and Procedural History

{¶7} In May 2022, the Trumbull County Grand Jury indicted Mr. Honzu on five counts: (1) kidnapping, a first-degree felony, with sexual motivation, SVP, and RVO specifications, in violation of R.C. 2905.01(A)(4) and (C), 2941.147, 2941.148, and 2941.149; (2) kidnapping, a first-degree felony, with sexual motivation, SVP, and RVO specifications, in violation of R.C. 2905.01(B)(1) and (C), 2941.147, 2941.148, and 2941.149; (3) kidnapping, a first-degree felony, with sexual motivation, SVP, and RVO specifications, in violation of R.C. 2905.01(B)(2) and (C), 2941.147, 2941.148, and 2941.149; and (4) & (5) rape, first-degree felonies, with SVP and RVO specifications, in violation of R.C. 2907.02(A)(2) and (B), 2941.148, and 2941.149.

{¶8} Prior to trial, the court granted Mr. Honzu's motion to bifurcate the SVP and RVO specifications, further finding the sexual motivation specifications would be tried to the jury.

Trial

{¶9} In December 2022, a jury trial was held in which the state presented testimony from the victim, several detectives, a sergeant, deputies from the Warren Police Department and the Trumbull County Sheriff's Office, a SANE nurse ("sexual assault nurse examiner"), and an Ohio Bureau of Criminal Investigation forensic biology and DNA analyst. The state also admitted into evidence the SANE report/medical records, the rape

kit and its contents, the victim's clothing, buccal swabs, DNA reports, and a photo of Mr. Honzu from 2007.

{¶10} The testimony and evidence presented at trial reflected that on July 29, 2007, in the early morning hours, Mr. Honzu followed and attacked the victim, A.E., brutally raping and beating her. Approximately nine years later, in 2018, a Trumbull County prosecutor called her, informing her they had made a match of the perpetrator from the rape kit she was administered in 2007. The various officers from the Trumbull County Sheriff's Office and the Warren Police Department led the jury through the SAK initiative that prompted the testing of the rape kit, the CODIS hit revealing a DNA match of Mr. Honzu, a confirmation of Mr. Honzu's DNA, and his eventual arrest.

Bifurcation of Trial – Findings on Specifications

{¶11} At the end of the first day of trial, the court held the specification hearing outside the presence of the jury. The state called Deputy Russ Molinatto ("Dep. Molinatto") from the Trumbull County Sheriff's Office, Department of Sex Offender Registration and Notification.

{¶12} Dep. Molinatto, Mr. Honzu's sex offender registration supervisor, identified Mr. Honzu, who has been registering as a sex offender for approximately 15-16 years. Dep. Molinatto elaborated on Mr. Honzu's prior convictions, which included rape of a 6-year old boy in Trumbull County in 1995; menacing by stalking with a sexual motivation of a 12-year old girl in Mahoning County in 2010; attempted abduction of a female jogger on a bike trail in Trumbull County in 2015; and attempted kidnapping with sexual motivation, SVP, and RVO specifications of a female at a car wash in Trumbull County in 2022.

{¶13} At the close of the hearing, the trial court reviewed, “[a]s to the factual findings to the repeat violent offender and repeat sexual offender, those verdict forms will be for the Court to sign, if the finding is made, and those will not be given to the jury.”

{¶14} The following day, the trial concluded with the jury returning a verdict of guilty on all counts, including the sexual motivation specifications attached to the three kidnapping counts. After the jury was dismissed, the court found Mr. Honzu “is a sexually violent predator” and “is a repeat violent offender” on each individual count. The verdict forms for each specification count had a line for the court to make a finding that Mr. Honzu “is” or “is not” a RVO or SVP.

Judgment on the Verdict

{¶15} A review of the judgment entry on the verdict reveals the court misstated the manner of conviction on the RVO specifications for each count by stating that the jury found Mr. Honzu guilty of each RVO specification. For example: “*The Jury*, on December 14, 2022, *returned a verdict* as follows:

{¶16} “Count #1: Guilty of Kidnapping (F1) with Sexual Motivation Specification, and *Repeat Violent Offender Specification* (ORC 2905.01(A)(1)&(C)(1), 2941.147, 2941.149, as charged in the first count of the Indictment.

{¶17} “The Court separately determined the Sexually Violent Predator Specification pursuant to the R.C. 2971.02. The Court finds that the Defendant **(is)** a Sexually Violent Predator (ORC 2914.148) as charged in Count One of the Indictment in this case.” (Italics emphasis added to indicate clerical error.)

The Sentencing Hearing

{¶18} At the beginning of the sentencing hearing, the trial court reviewed, “Mr. Honzu, a duly impaneled jury of your peers found you guilty of one count of Kidnapping, a Felony of the First Degree with specifications; Count Two, Kidnapping, a Felony of the First Degree with specifications; Count Three, Kidnapping with a sexual motivation specification. Also found you guilty of Count Four, Rape, a Felony of the First Degree, and Count Five, Rape, a Felony of the First Degree.

{¶19} “The Court, pursuant to your request to bifurcate the findings, found you guilty of the sexual violent predator specifications and repeat violent offender specifications on all, Counts One, Two, Three, Four and Five.”

{¶20} The state and the defense stipulated that the kidnapping counts (Counts One, Two, and Three) merged for purposes of sentencing, and the state elected to move forward with sentencing on Count One.

{¶21} Accordingly, the trial court sentenced Mr. Honzu on the merged kidnapping count and the two counts of rape to identical, consecutive terms of imprisonment of a minimum of 20 years to a maximum of life in prison on each count (10-year terms on the RVO specification for each count to be served prior to and consecutive to a 10-year term for each offense, and up to a mandatory term of life on each SVP specification) for a total of a minimum of 60 years to a maximum of life, to be served consecutively to his sentence in the 2022 attempted kidnapping case.

The Sentencing Judgment Entry

{¶22} A review of the sentencing entry reveals the court misstated the manner of conviction on the RVO specifications for each count. Thus, the “Entry on Sentence” states, in relevant part:

{¶23} “[O]n December 14, 2022, the *Jury returned a verdict* and the Defendant was found guilty of Count One: Kidnapping (F1) with Sexual Motivation Specification and *Repeat Violent Offender Specification* in violation of R.C. 2905.01(A)(4)&(C), 2941.147 and 2941.149; Count Two: Kidnapping (F1) with Sexual Motivation Specification and *Repeat Violent Offender Specification* in violation of R.C. 2905.01(B)(1)&(C), 2941.147 and 2941.149; Count Three: Kidnapping (F1) with Sexual Motivation Specification and *Repeat Violent Specification* in violation of R.C. 2905.01(B)(2)&(C), 2941.147 and 2941.149 and Counts Four and Five: Rape (F1) with *Repeat Violent Offender Specification* in violation of R.C. 2907.029(A)(2)&(B) and 2941.149. As to Counts One, Two, Three, Four and Five, the Court finds that the Defendant is a sexually violent predator pursuant to R.C. 2914.148.” (Emphasis added to indicate clerical error.)

{¶24} Mr. Honzu raises one assignment of error for our review:

{¶25} “The trial judge committed prejudicial and reversible error by sentencing defendant-appellant to terms of imprisonment as a sexually violent predator and repeat violent offender without verdicts of guilty being rendered thereon.”

Guilty Verdict on Specifications

{¶26} In his sole assignment of error, Mr. Honzu challenges the trial court’s verdict on the SVP and RVO specifications. More specifically, he contends the trial court did not find he was “guilty,” and, thus, his sentences on those specifications are void.

{¶27} Because Mr. Honzu did not object in the court below, our review is limited to consideration of whether the trial court committed plain error. *State v. Lefkowitz*, 11th Dist. Trumbull No. 2021-T-0054, 2022-Ohio-4052, ¶ 15. In order to prevail under a plain error standard pursuant to Crim.R. 52(B), an appellant must demonstrate: (1) an error, i.e., a deviation from a legal rule, (2) that is plain (an obvious defect in the trial proceedings), (3) that must have affected the outcome of the trial. *State v. Noling*, 98 Ohio St.3d 44, 2002-Ohio-7044, 781 N.E.2d 88, ¶ 62, quoting *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68, 759 N.E.2d 1240.

{¶28} At the outset, we note “[a] sentence is void when a sentencing court lacks jurisdiction over the subject matter of the case or personal jurisdiction over the accused.” *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 42. An argument that the trial court imposed a sentence not authorized by statute “challenges the exercise of jurisdiction and if true would render [Mr. Honzu’s] sentence voidable, not void.” *State ex rel. Crangle v. Summit Cty. Common Pleas Court*, 162 Ohio St.3d 488, 2020-Ohio-4871, 165 N.E.3d 1250, ¶ 10.

{¶29} Mr. Honzu takes issue with the trial court’s verdict of “is” or “is not” for each SVP and RVO specification on the verdict forms instead of using the terms “guilty” or “not guilty.” A review of the applicable statutes, however, reveals the trial court properly followed the statutory language and determined that Mr. Honzu “is” a SVP and a RVO.

{¶30} R.C. 2941.148(B), “sexually violent predator specification,” provides, “[i]n determining for purposes of this section whether a person *is* a sexually violent predator, all of the factors set forth in divisions (H)(1) to (6) of section 2971.01 of the Revised Code that apply regarding the person may be considered as evidence tending to indicate that

it is likely that the person will engage in the future in one or more sexually violent offenses.” (Emphasis added.)

{¶31} Comparably, R.C. 2941.149(B), “specification concerning repeat violent offenders,” provides “[t]he court shall determine the issue of whether an offender *is* a repeat violent offender.” (Emphasis added.)

{¶32} We addressed this issue in *State v. Krug*, 11th Dist. Lake No. 2008-L-085, 2009-Ohio-3815, where we explained:

{¶33} “The terms ‘repeat violent offender’ and ‘offense of violence’ are both statutorily defined. Accordingly, R.C. 2941.149(B) leaves the determination of whether a defendant *is* a RVO to the trial court. Once the prior convictions are stipulated, as in the instan[t] case, the trial court is required to apply the statutory definitions and determine whether a defendant *is* a RVO. No additional factfinding is involved in that determination. Here, the trial court correctly determined that based on his prior convictions [the appellant] *is* a RVO, and therefore convicted him of the RVO specifications.” (Emphasis added.) *Id.* at ¶ 162.

{¶34} Similarly, in this case, the trial court held the bifurcated hearing, where evidence of Mr. Honzu’s prior convictions was entered into the record. The trial court rendered its verdict finding Mr. Honzu “is” a SVP and “is” a RVO on each count. We find no error in the trial court’s determinations.

{¶35} In support, Mr. Honzu cites to *State v. Woods*, 1st Dist. Hamilton No. C-060340, 2007-Ohio-1487, which dealt, in part, with a “prior conviction specification.” The prior conviction specification was contained in former R.C. 2941.142, which allowed for an additional term of incarceration for an offender who had a previous conviction of a first-

, second-, or third-degree felony, if the indictment included the appropriate specification. *Id.* at ¶ 31. Before the start of trial, the appellant’s counsel informed the court it would stipulate to his previous conviction of robbery, as the indictment specified. *Id.* at ¶ 32. Consequently, the state agreed not to discuss the previous conviction at the trial. *Id.* The trial court made no mention of the prior conviction specifications when announcing the jury’s verdict, nor did it mention the prior conviction specifications at sentencing, although it imposed enhanced sentences on those offenses. *Id.* While the trial court referred to other specifications for offenses charged in the indictment, the judgment of conviction neglected to mention the prior conviction specifications. *Id.* at ¶ 33. The First District determined because there was no “finding of guilt” as to those specifications, the court had no authority to impose the enhanced sentences. *Id.* at ¶ 34.

{¶36} In this case, the trial court determined on separate verdict forms for each specification attached to each count that Mr. Honzu “is” a SVP and “is” a RVO. The court also announced its verdicts in open court. Thus, the trial court made the appropriate “findings of guilt,” and the court had the authority to impose the enhanced sentences.

{¶37} Mr. Honzu’s assignment of error is without merit.

Clerical Errors

{¶38} We do, however, note clerical errors in the trial court’s “judgment on the verdict” and “entry on sentence” judgment entries. Both mistakenly indicate the jury found Mr. Honzu guilty of the RVO specifications for each count instead of the court.

{¶39} Under Crim.R. 36, “[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time.”

{¶40} “The purpose of a nunc pro tunc entry under Crim.R. 36 is to record actions that actually were taken but not correctly recorded.” *State v. Baker*, 12th Dist. Butler No. CA20220-10-094, 2023-Ohio-1699, ¶ 32, quoting *State v. Glover*, 2d Dist. Montgomery No. 28994, 2021-Ohio-2533, ¶ 11; see also *State v. Stewart*, 12th Dist. Butler No. CA2010-08-215, 2011-Ohio-2211, ¶ 15.

{¶41} Because the judgment entries of conviction and sentence contain a mistake as to the manner of conviction, we remand this case and direct the trial court to issue a nunc pro tunc sentencing entry reflecting that the trial court found Mr. Honzu is a RVO on each count. See *Baker* at ¶ 32; *State v. Chasteen*, 12th Dist. Butler No. CA2012-12-247, 2013-Ohio-3573, ¶ 17; *Dublin v. Starr*, 10th Dist. Franklin No. 21AP-173, 2022-Ohio-2298, ¶ 11, fn. 2 and ¶ 67.

{¶42} The judgment of the Trumbull County Court of Common Pleas is affirmed and remanded for the limited purpose of issuing a nunc pro tunc sentencing entry to correct the manner of conviction on the RVO specifications.

EUGENE A. LUCCI, J.,

ROBERT J. PATTON, J.,

concur.