

[Cite as *State v. Smith*, 2012-Ohio-192.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 24592
v.	:	T.C. NO. 04CR3554
RONALD A. SMITH	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 20th day of January, 2012.

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Attorney for Plaintiff-Appellee

RONALD A. SMITH, Atty. Reg. No. #516-443, Lebanon Correctional Institution, P. O. Box 56, Lebanon, Ohio 45036
Defendant-Appellant

DONOVAN, J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Ronald A. Smith, filed April 25, 2011. Smith was convicted by a jury of aggravated robbery and aggravated

burglary, and he was sentenced in January, 2006, to ten years on each count to be served consecutively to each other and concurrent to a sentence in another case that was subsequently reversed. This Court affirmed Smith's convictions. *State v. Smith*, Montgomery App. Nos. 21463, 22334, 2008-Ohio-6330.

{¶ 2} On February 25, 2011, Smith filed "Defendant's Motion for Final Appealable Order and Discharge," arguing that the omission from his January 30, 2008 Termination Entry of the means of his conviction renders his conviction and sentence void and requires his immediate discharge from prison. The trial court overruled Smith's motion. In addition to his brief, we note that Smith filed, on September 28, 2011, a Motion for Summary Judgment, which this Court overruled on October 25, 2011. Therein, Smith repeated the argument made in his motion for a final appealable order, and this Court determined as follows: "The Supreme Court of Ohio has held that 'the technical failure to comply with Crim.R. 32(C) by not including the manner of conviction * * * is not a violation of a *statutorily* mandated term, so it does not render the [judgment of conviction] a nullity.' (Emphasis sic). *State ex rel. DeWine v. Burge*, 128 Ohio St.3d 236, 2011-Ohio-235, at ¶ 19. This type of omission is clerical in nature, and the trial court is permitted to correct it through a nunc pro tunc entry. *Id.* at ¶ 18. Moreover, the [S]upreme [C]ourt has recently held that the finality of a judgment entry of conviction is not affected by a trial court's failure to include the manner of conviction. *State v. Lester*, Slip Opinion No. 2011-Ohio-5204, at ¶ 12. However, a defendant is entitled to an order that conforms to Crim.R. 32(C). *Id.* at ¶ 15." This court further noted that the trial court issued a nunc pro tunc judgment entry on October 21, 2011 that complies with Crim.R. 32(C) by stating that a

jury found Smith guilty of the convicted offenses. Finally, this Court ordered Smith to show cause within 20 days from the journalization of that order why the above captioned appeal should not be dismissed. Smith did not respond as ordered.

{¶ 3} In his brief, without setting forth specific assigned errors, Smith again argues that his sentence is void and that he is entitled to immediate discharge due to the defect in his original termination entry. For the reasons set forth in our Decision and Entry overruling his motion for summary judgment, Smith's argument lacks merit and is overruled. The judgment of the trial court is affirmed.

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FAIN, J. and FROELICH, J., concur.

Copies mailed to:

Timothy J. Cole
Ronald A. Smith
Hon. Dennis J. Langer