

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-26-00047  
L-26-00048

Appellee

Trial Court No. CR-25-152  
CR-25-817

v.

Xzavier Rutherford

**DECISION AND JUDGMENT**

Appellant

Decided: September 11, 2026

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Brenda Majdalani, Assistant Prosecuting Attorney, for appellee.

Henry Schaefer, for appellant.

\* \* \* \* \*

**Zmuda, J.**

{¶ 1} This consolidated appeal is before the court from the judgment of the Lucas County Court of Common Pleas, sentencing appellant, Xzavier Rutherford, to an aggregate, indefinite prison term of 24 to 27 years. Because the State has conceded a clerical error in the sentencing entry, and we agree that the entry does not correctly set forth the sentence as ordered on the record, we reverse and remand for a *nunc pro tunc* entry to correct the typographical error.

{¶ 2} On February 3, 2025, Rutherford was indicted on numerous felony counts in Lucas County Common Pleas case No. CR 2025-00152, including three counts of felonious assault in violation of R.C. 2903.11(A)(2) and (D)(1)(a), felonies of the second degree (Counts 1, 4, and 7); three counts of improperly discharging a firearm into a habitation in violation of R.C. 2923.161(A)(1) and (C), felonies of the second degree (Counts 2, 5, and 8); and three counts of improperly handling firearms in a motor vehicle in violation of R.C. 2923.16(A) and (I), felonies of the fourth degree (Counts 3, 6, and 9). Counts 1, 2, 4, 5, 7, and 8 each included a three-year firearm specification pursuant to R.C. 2941.145(A) and a five-year firearm specification pursuant to R.C. 2941.146(A). Rutherford was arraigned and entered pleas of not guilty to the charges.

{¶ 3} During the pendency of case No. CR 2025-00152, Rutherford was indicted in Lucas County Common Pleas case No. CR2025-00817 on one count of receiving stolen property in violation of R.C. 2913.51(A) and (C), a felony of the fourth degree (Count 1); one count of tampering with evidence in violation of R.C. 2921.12(A)(1) and (B), a felony of the third degree (Count 2); and one count of carrying a concealed weapon in violation of R.C. 2923.12(A)(1) and (F)(1), a felony of the fourth degree (Count 3). Counts 1 and 2 each included a one-year firearm specification pursuant to R.C. 2941.141(A). Rutherford was arraigned and entered pleas of not guilty to the charges.

{¶ 4} On January 7, 2026, following plea negotiations, Rutherford withdrew his previous plea in case No. CR 2025-00152, and pled guilty to Count 2, improperly discharging a firearm into a habitation, a felony of the second degree, with a mandatory five-year firearm specification; and Count 7, felonious assault, a felony of the second degree.

degree, with a mandatory five-year firearm specification. Pursuant to the plea agreement, the State agreed to dismiss the three-year firearm specifications attached to Counts 2 and 7, and agreed to dismiss Counts 1, 3-6, and 8-9, and the attendant firearm specifications at sentencing.

{¶ 5} On January 14, 2026, Rutherford withdrew his previous plea in case No. CR 2025-00817, and pled guilty to Count 1, receiving stolen property, a felony of the fourth degree; and the lesser offense in Count 2, attempted tampering with evidence, a felony of the fourth degree. Pursuant to the plea agreement, the State agreed to dismiss the one-year firearm specifications in Counts 1 and 2, and to dismiss Count 3 at sentencing. The State also agreed to recommend the sentence in case No. CR 2025-00817 run concurrent to the sentence imposed in case No. CR 2025-00152.

{¶ 6} On January 28, 2026, the trial court held a sentencing hearing in both cases.

{¶ 7} In case No. CR 2025-00817, the trial court imposed a sentence of 17 months as to Count 1, receiving stolen property, and a sentence of 17 months as to Count 2, attempted tampering with evidence. The trial court considered the factors under R.C. 2929.14(C)(4) and ordered the sentences to run consecutively to each other. Pursuant to the plea agreement, the State dismissed the firearm specifications attached to Counts 1 and 2, and dismissed Count 3.

{¶ 8} In case No. CR 2025-00152, the trial court imposed a sentence of 7 to 10-and-a-half years for Count 2, improperly discharging a firearm into a habitation, with a mandatory and consecutive term of 5 years for the firearm specification. The trial court imposed a sentence of 7 to 10-and-a-half years for Count 7, felonious assault, with a 3.

mandatory and consecutive term of 5 years for the firearm specification. The trial court considered the factors under R.C. 2929.14(C)(4) and ordered “the sentences to be served consecutively to each other and concurrently with Case Number CR2025-00817, for an aggregate sentence of 24-27 1/2 years,” and determined that Rutherford “shall serve one indefinite term, specially Count 7” pursuant to R.C. 2929.144(B)(2). Pursuant to the plea agreement, the State dismissed the three-year firearm specifications attached to Counts 2 and 7, and dismissed all remaining counts and firearm specifications.

{¶ 9} Pertinent to this appeal, the trial court stated the following on the record in imposing sentence:

This situation I think in consistency – consistency is important in the criminal justice system. However, I think there are significant differences between this case and [Rutherford’s co-defendant’s] case. So, I do think a lengthier sentence is appropriate considering your criminal history, the damage you did to people, and sort of your repeated conduct. So I am going to do 7 years in case 152. I’m setting the minimum on Count 2 at 7 years. So that would be a tail of 3 and a half years. On Count 7 I’m setting the minimum of also 7 years, which means you would have another tail of 3 and a half years. However, pursuant to State v James and state law, you would only serve one tail, but nevertheless I have to institute tails on both cases per the wisdom of the Sixth District Court of Appeals. There are two 5 year firearm specs attached to both of those cases that are mandatory and consecutive. I’m going to run these two counts consecutive to one another. So that would be 7 plus 7 plus 5 plus 5. By my math that’s 24. And the tail, there can only be one tail of 3 and a half, would make it 24 to 27 and a half years. On case 817, we’ll do 17 months on Count 1, and 17 months on Count 2. I’m going to run those two counts consecutive to each other, but concurrent to 152.

....

... Therefore, it is hereby ordered that the defendant serve a term of 7 years as to Count 2, and 7 years as to Count 7. The sentences are ordered to be served consecutively to one another, for a total stated prison term of 7 plus 7 plus 5 plus 5 is 24 years. Only one tail can be implemented. That tail is 3 and a half years. If I have to select which one, I guess I’ll select the tail being Count 2. So you would serve between 24 and 27 and a half years. The

additional terms of two 5 year firearm specifications are imposed as mandatory and consecutive terms pursuant to 2929.14(B)(1). One 5 year term is attached to Count 2. One 5 year terms is attached to Count 7.

{¶ 10} The trial court journalized its written sentencing judgment in each case on January 30, 2026. The entry in case No. CR 2025-00152 provided the following:

COUNT 2: Pursuant to Senate Bill 201, Defendant ordered to serve an indefinite term of a minimum of 7 years to a maximum of 10-1/2 years in prison, to be served consecutively with Count 7.

An additional term is imposed for Count 7 as a mandatory and consecutive term pursuant to R.C. 2929.14(C)(1)(a) of 5 years.

COUNT 7: Pursuant to Senate Bill 201, Defendant ordered to serve an indefinite term of a minimum of 7 years to a maximum of 10-1/2 years in prison, to be served consecutively with Count 7.

An additional term is imposed for Count 7 as a mandatory and consecutive term pursuant to R.C. 2929.14(C)(1)(a) of 5 years.

{¶ 11} On February 19, 2026, the trial court entered a *nunc pro tunc* entry in case No. CR 2025-00152, to correct the clerical error regarding the mandatory five-year firearm specification attached to Count 2, improperly discharging a firearm into a habitation. The new entry, however, did not address the clerical error as to Count 7, which ordered the term imposed in Count 7 “to be served consecutively with Count 7.”

{¶ 12} Rutherford perfected a timely appeal in each case, and asserts a single assignment of error:

The trial court erred to the prejudice of Appellant by journalizing a *Nunc Pro Tunc* Judgment Entry that commands a facially contradictory and circular consecutive sentencing layout, violating Appellant’s right to an explicit, unambiguous, and legally valid final judgment under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution.

{¶ 13} Rutherford acknowledges that the trial court otherwise conducted proper plea colloquies and properly considered the factors to support consecutive sentences under R.C. 2929.14(C)(4). His sole challenge on appeal concerns the typographical error in the *nunc pro tunc* entry, journalized on February 19, 2026 in case No. CR 2025-00157 as ordering “a structural and logical impossibility” in violation of his “protected liberty interests” and his “Due Process rights,” requiring a remand for entry of “a valid, unambiguous sentencing entry.” The State acknowledges the typographical error but argues that a remand for a new *nunc pro tunc* entry is appropriate.

{¶ 14} Courts “possess inherent authority to correct errors in judgment entries so that the record speaks the truth.” (Citation omitted) *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 163-164 (1995). A trial court may enter a *nunc pro tunc* judgment “where a court has acted and its action has not been correctly recorded.” *State v. Coleman*, 110 Ohio App. 475, 479 (6th Dist.1959).

Judgments *nunc pro tunc* are employed to make the record speak the truth, and the function of such entries is the correction of judgments rendered in so far as they fail to record, or improperly record, the judgment rendered by the court, as distinguished from the correction of an error in the judgment itself or in a failure to render the judgment; and a *nunc pro tunc* entry of a judgment is not available to alter the conclusion of the court.

*Id.*

{¶ 15} In this case, the parties agree that the trial court ordered Counts 2 and 7 to run consecutively to each other in case No. CR 2025-00152, and that the sentencing entry journalized in the February 19, 2026 *nunc pro tunc* judgment entry contained a typographical error, mistakenly ordering the sentence in Count 7 to run consecutively to the sentence in Count 7, rather than Count 2. Having carefully reviewed the record, we

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agree with the parties that the trial court made a typographical error in the sentencing entry, setting forth an inconsistent sentence that does not “speak the truth” as it relates to the sentence imposed by the trial court. We therefore find Rutherford’s single assignment of error well-taken.

{¶ 16} Accordingly, we reverse the judgment of the Lucas County Court of Common Pleas and remand for a new *nunc pro tunc* sentencing entry, correcting the typographical error, to conform to the sentence imposed by the trial court at the sentencing hearing. The State is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed and remanded.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
*See also* 6th Dist.Loc.App.R. 4.

Gene A. Zmuda, J.

JUDGE

Myron C. Duhart, J.

JUDGE

Charles E. Sulek, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at:  
<http://www.supremecourt.ohio.gov/ROD/docs/>.