COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	
		No. 110539
v.	:	
ARCHIE GRAY,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: January 6, 2022

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-89-236255-B

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney,
and Frank Romeo Zeleznikar, Assistant Prosecuting Attorney,
for appellee.

Archie Gray, *pro se.*

MICHELLE J. SHEEHAN, P.J.:

{¶ 1} Defendant-appellant Archie Gray appeals the trial court's denial of his motions to vacate void judgment and the trial court's issuance of a nunc pro tunc entry reflecting his convictions. We affirm the trial court's denial of the motions to

vacate void judgment and find that the trial court properly entered a nunc pro tunc entry to correct the entry of conviction.

I. Procedural History and Facts

{¶ 2} On May 1, 1989, a jury found Gray guilty of attempted murder, kidnapping, and aggravated robbery with firearm specifications. The trial court entered the verdicts on a journal entry filed the same day. On May 2, 1989, the trial court held a hearing and found Gray guilty of prior conviction specifications. Thereafter, the trial court sentenced Gray to an aggregate term of incarceration of 48 to 75 years in prison. The trial court entered its guilty findings upon the specifications and the sentence it imposed in one journal entry.

{¶ 3} Gray filed an appeal of his convictions. Upon appeal, he raised as assignments of error that 1) the trial court erred by imposing an illegal sentence, 2) the trial court erred by admitting other acts testimony at trial, and 3) the evidence presented at trial was insufficient to sustain a conviction. *State v. Gray*, 8th Dist. Cuyahoga No. 58416, 1991 Ohio App. LEXIS 391 (Jan. 31, 1991). This court overruled Gray's assignments of error and affirmed his convictions. *Id.* Over the years, Gray filed two petitions for postconviction relief that were denied and then in 2017, 2018, and 2019, he filed motions alleging his convictions were void and/or that he received an illegal sentence. Those motions were denied, and Gray did not perfect appeals.

{¶ 4} On March 30, 2020, Gray filed a motion to vacate void judgment. The state responded to the motion, asked the court to deny the motion, and moved the

trial court to issue a nunc pro tunc entry so that Gray's convictions were reflected in one journal entry in compliance with Crim.R. 32(C). On July 16, 2020, Gray filed another motion to vacate void judgment and or sentence.

{¶ 5} On May 3, 2021, the trial court denied Gray's March 30, 2020, and July 16, 2020 motions. On the same date, the trial court issued a nunc pro tunc entry that combined the language from the May 1, 1989, and May 2, 1989 journal entries into one entry. The court prefaced the nunc pro tunc journal entry with the following explanation:

> The following entry is issued nunc pro tunc as if and for the jury verdict entry issued on May 1, 1989, and the sentencing entry issued on May 2, 1989, in compliance with the one-document rule in *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, pursuant to *State ex rel. Snead v Ferenc*, 138 Ohio St.3d 136, 2014-Ohio-43, ¶ 9 -10.

II. Law and Argument

{¶ 6} Gray asserts one assignment of error, which provides:

> Trial court erred as a matter of law by entering a nunc pro tunc order, to the prejudice of appellant in an attempt to have a sentencing journal entry conform with the mandate of Ohio Revise[d] Code, 2505.03 and Rule 32(C), or Rules of Criminal Procedure Rule: By including a substantive requirement therein. Where prior to the inclusion of said substantive element there did not exist a final appealable order of appellant's 1989 convictions and sentences from which the court of appeals could have obtained subject-matter jurisdiction.

{¶ 7} Gray argues that the trial court's May 2, 1989 sentencing entry is void because it did not include the fact of his convictions and that the trial court could not issue the nunc pro tunc entry because the nunc pro tunc entry contained substantive material. As such, he states the May 2, 1989 sentencing entry did not

constitute a final appealable order, his 1991 appeal was null and void, this court had no jurisdiction to hear his appeal, and he is entitled to a new sentencing hearing.

{¶ 8} Crim.R. 32(C) provides that "a judgment of conviction shall set forth the fact of conviction and the sentence." In *State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶ 1, the Ohio Supreme Court explained that

> [a] judgment of conviction is a final order subject to appeal under R.C. 2505.02 when it sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk. (Crim.R. 32(C), explained; *State v. Baker*, 119 Ohio St.3d 197, 2008 Ohio 3330, 893 N.E.2d 163, modified.)

{¶ 9} The trial court's May 2, 1989 journal entry imposing sentence did not comply with Crim.R. 32(C) because the entry failed to indicate both the fact of Gray's convictions and the sentence imposed. However, where a sentencing entry does not comply with Crim.R. 32(C), the remedy for that error is for the trial court to issue a corrected sentencing entry by means of a nunc pro tunc entry. *State ex rel. DeWine v. Burge*, 128 Ohio St.3d 236, 2011-Ohio-235, 943 N.E.2d 535, ¶ 18.

{¶ 10} In this case, the trial court combined the language from the May 1, 1989 and May 2, 1989 journal entries in its nunc pro tunc journal entry. The trial court did not add any material or change the events recorded in the 1989 journal entries. The nunc pro tunc entry includes the fact of Gray's convictions, the sentences imposed, and the judge's signature and contains a time stamp from the clerk indicating that it was entered upon the trial court's journal. As such, the trial court's denial of Gray's motions to vacate his sentencing entries was not error and it

employed the proper remedy by issuing a nunc pro tunc entry that conformed with Crim.R. 32(C).

{¶ 11}As to Gray's arguments that his convictions were void and not subject to an appeal, in *Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, at paragraph two of the syllabus, the Ohio Supreme Court held that "[a] nunc pro tunc judgment entry issued for the sole purpose of complying with Crim.R. 32(C) to correct a clerical omission in a final judgment entry is not a new final order from which a new appeal may be taken." Further, the Ohio Supreme Court held "the technical failure to comply with Crim.R. 32(C) by not including the manner of conviction in [defendant's] sentence is not a violation of a statutorily mandated term, so it does not render the judgment a nullity." *Burge* at ¶ 19. Accordingly, Gray's sole assignment of error is overruled.

III. Conclusion

{¶ 12} Gray was convicted after trial and sentenced in 1989. He prosecuted an appeal of his convictions. In 2020, Gray filed motions to have his convictions vacated because the journal entry imposing his sentences did not conform with Crim.R. 32(C). On May 3, 2021, the trial court denied the motions to vacate Gray's convictions but recognized that the original sentencing entry did not comply with Crim.R. 32(C) and properly issued a nunc pro tunc sentencing entry that complies with Crim.R. 32(C) because it includes the fact of Gray's convictions, the sentences imposed, the judge's signature, and a time stamp by the clerk indicating the entry was properly journalized upon the court's docket.

{¶ 13} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MICHELLE J. SHEEHAN, PRESIDING JUDGE

LISA B. FORBES, J., and
EMANUELLA D. GROVES, J., CONCUR