

[Cite as *State v. Hampton*, 2016-Ohio-5419.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103992

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CARL HAMPTON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-582137-B

BEFORE: Laster Mays, J., Blackmon, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: August 18, 2016

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ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant, Carl Hampton (“Hampton”), appeals his court- imposed fine and asks this court to vacate his sentence and remand the matter for resentencing. We affirm the trial court’s imposition of a fine, but remand the case to the trial court so that it may correct the sentencing entry nunc pro tunc.

{¶2} Hampton pleaded guilty to one count of trafficking, a second-degree felony in violation of R.C. 2925.03(A)(2), with a felony specification under R.C. 2941.1417. The trial court declared Hampton indigent for the purpose of appeals, and sentenced him to a mandatory prison term of four years, and ordered Hampton to pay a \$10,000 mandatory fine. (Tr. 615 - 617.) Hampton requested deferred payment of the fine until he was released from prison. (Tr. 617 and 618.) The trial court agreed and ordered that this sentence run concurrent with the fifteen-years-to-life prison sentence imposed in another case. Although the trial court ordered Hampton to pay a \$10,000 mandatory fine, the journal entry incorrectly states that Hampton was ordered to pay a \$15,000 fine. As a result, Hampton has filed this appeal and assigned one error for our review:

I. The fine, which appears on the sentencing journal entry, is different than that which was imposed by the trial court during sentencing and the trial court did not assess Mr. Hampton’s present and future ability to pay, accordingly, the sentence should be vacated.

I. Correcting a Journal Entry

{¶3} Crim.R. 36 specifically allows for the trial court to correct a clerical mistake in a judgment or order at any time, and App.R. 9(E) authorizes an appellate court to direct that the misstatement be corrected. *State v. Boyd*, 8th Dist. Cuyahoga Nos. 82921, 82922, and 82923, 2004-Ohio-368. “Furthermore, while courts possess authority to correct errors in judgment entries so that the record speaks the truth, nunc pro tunc entries are limited in proper use to reflecting what the court actually decided, not what the court might or should have decided or what the court intended to decide.” *State v. Williams*, 6th Dist. Lucas No. L-02-1394, 2004-Ohio-466.

{¶4} “Although a court speaks through its journal entries, clerical errors may be corrected at any time in order to conform to the transcript of the proceedings.” *State v. Steinke*, 8th Dist. Cuyahoga No. 81785, 2003-Ohio-3527, ¶ 47; Crim.R. 36. “The trial courts retain continuing jurisdiction to correct these clerical errors in judgments with a nunc pro tunc entry to reflect what the court actually decided.” *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 19.

{¶5} The trial court stated, “the Court is going to order four year confinement, and that is a mandatory four years, and a mandatory fine of \$10,000 — a fine that’s mandatory. * * * [t]he Court imposes a fine of \$10,000.” (Tr. 614 and 615.) The sentencing entry, however, reflects a \$15,000 mandatory fine. Therefore, because the sentencing entry is inconsistent with the court’s decision, the sentencing entry should be corrected by a nunc pro tunc entry to accurately reflect the court’s decision at the

sentencing hearing. See *State v. Wilson*, 8th Dist. Cuyahoga No. 102189, 2016-Ohio-379.

II. Imposing Court Costs

{¶6} “A trial court has broad discretion when imposing financial sanctions upon a defendant, and an appellate court will review the trial court’s decision for an abuse of discretion.” *State v. Dansby-E.*, 8th Dist. Cuyahoga Nos. 102656, 102657, 102658, and 102659, 2016-Ohio-202, ¶ 26. “To constitute an abuse of discretion, the ruling must be more than legal error; it must be unreasonable, arbitrary, or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

{¶7} “Ohio law does not prohibit a court from imposing a fine on an indigent defendant.” *State v. Williams*, 8th Dist. Cuyahoga No. 92419, 2009-Ohio-5964, ¶ 8, citing *State v. Ramos*, 8th Dist. Cuyahoga No. 92357, 2009-Ohio-3064; and *State v. Roark*, 8th Dist. Cuyahoga No. 84992, 2005-Ohio-1980. “Nor does the filing of an affidavit of indigency by a defendant automatically entitle a defendant to a waiver of a mandatory fine.” *State v. Gipson*, 80 Ohio St.3d 626, 687 N.E.2d 750 (1998). “Thus, imposition of the mandatory fine is required unless (1) the offender’s affidavit is filed prior to sentencing, and (2) the trial court finds that the offender is an indigent person and is unable to pay the mandatory fines.” *Id.* at 634; R.C. 2929.18(B)(1). As to the trial court’s findings, “there are no express factors that must be taken into consideration or findings regarding the offender’s ability to pay that must be made on the record.” *State v. Martin*, 140 Ohio App.3d 326, 338, 747 N.E.2d 318 (4th Dist.2000).

{¶8} Hampton did not file an affidavit of indigence prior to sentencing, did not ask the court to waive the fine, and only requested if he could delay making payments until he was in a position to pay them. (Tr. 618.) The court honored his request and stated, “Now, with regard to fines, I’m imposing \$10,000. I’m going to defer payment of that until you’re released from prison. If and when that occurs, you will have to start making payments on that fine at that time.” *Id.*

{¶9} In relevant part, R.C. 2929.18(B)(1) provides:

If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.

{¶10} Under R.C. 2929.18(B)(1), in order to avoid an imposition of the mandatory fine, the defendant must (1) submit an affidavit of indigency to the court prior to sentencing, and (2) the court must find that the offender is an indigent person and is unable to pay the mandatory fine. *Gipson*, 80 Ohio St.3d 626, 634, 687 N.E.2d 750 (1998). “Moreover, before imposing a financial sanction under R.C. 2929.18, the court must also consider the offender’s present and future ability to pay the amount of the sanction or fine. R.C. 2929.19(B)(5).” *Dansby-E.*, 8th Dist. Cuyahoga Nos. 102656, 102657, 102658, and 102659, 2016-Ohio-202, ¶ 28.

{¶11} In this matter, Hampton did not file an affidavit of indigency with the trial court prior to sentencing as required under R.C. 2929.18(B)(1). However, the court granted Hampton, upon Hampton’s request to pay when he was in a position to pay, a

delay in paying until after he is released. Based upon our review of the record, we find that Hampton has failed to demonstrate that he is indigent and unable to pay, and therefore, the trial court properly imposed a mandatory fine. We overrule appellant's sole assignment of error.

{¶12} Judgment is affirmed. The case is remanded to the trial court for the limited purpose of correcting the sentencing entry with regards to the mandatory fine nunc pro tunc.

It is ordered that the appellant and appellee split 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.

ANITA LASTER MAYS, JUDGE

PATRICIA ANN BLACKMON, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR