

[Cite as *State v. Ewers*, 2011-Ohio-1354.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

RACHEL EWERS

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Julie A. Edwards, J.

Hon. Patricia A. Delaney, J.

Case No. 10CAA090081

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Delaware County Court of
Common Pleas, Case Nos. 07 CRI 05258
and 07 CRI 06323

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

March 21, 2011

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Rachel Ewers appeals the September 17, 2010 Second Nunc Pro Tunc Judgment Entry On Sentence entered by the Court of Common Pleas of Delaware County. The State of Ohio is plaintiff-appellee.

STATEMENT OF THE CASE¹

{¶2} On October 11, 2007, the trial court sentenced Appellant on three counts of Endangering Children. On July 15, 2010, the trial court filed a Nunc Pro Tunc Judgment Entry On Sentence to comply with *State v. Baker*, 119 Ohio St.3d 1197. In the later entry, the trial court also corrected a part of its original sentence to specify Appellant shall be subject to a mandatory period of post-release control of three years.

{¶3} Thereafter, Appellant filed a Motion to Restore Resentencing and Motion for Jail Time Credit. The trial court denied said motion via Judgment Entry filed September 17, 2010, and stated therein the basis of its amended entry dated July 15, 2010, regarding post release control was to comply with R.C. 2929.191(A)(1). Thereafter, the trial court entered its Second Nunc Pro Tunc Judgment Entry On Sentence which is the subject of the instant appeal.

{¶4} Appellant assigns as error:

{¶5} "I. THE TRIAL COURT ERRED IN NOT HOLDING A DE NOVO RE-SENTENCING HEARING FOR THE APPELLANT IN THIS CASE."

{¶6} Herein, Appellant maintains the trial court erred in resentencing her pursuant to R.C. 2929.191(A)(1) rather than conducting a de novo resentencing hearing

¹ A rendition of the underlying facts is unnecessary for our disposition of Appellant's sole assignment of error.

as provided in R.C. 2929.191(C). The State concedes Appellant's sentence cannot be corrected by the [SECOND] nunc pro tunc entry because Appellant was originally sentenced after July 11, 2006, the effective date of R.C. 2929.191.² We agree.

{17} Appellant's sole assignment of error is sustained. The judgment of the trial court is reversed and the matter remanded for resentencing.

By: Hoffman, P.J.

Edwards, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

² See Appellee's Brief at p.4.

