

[Cite as *State v. Wolfe*, 2015-Ohio-1585.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 26313
Plaintiff-Appellee	:	
	:	Trial Court Case No. 93-CR-556
v.	:	
	:	(Criminal Appeal from
JAVELEN WOLFE	:	Common Pleas Court)
	:	
Defendant-Appellant	:	

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OPINION

Rendered on the 24th day of April, 2015.

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FAIN, J.

{¶ 1} Defendant-appellant Javelen Wolfe appeals from an order of the trial court overruling his June 4, 2014 Motion to Re-hear & Correct Termination Entry Pursuant to

[R.C.] 2505.02 and Crim.R. 32(B). The State concedes, and we agree, that the trial court should have corrected the judgment entry by reflecting therein that Wolfe was convicted after a jury trial, by including the amount of court costs awarded, by including reference to the statutory numerical section corresponding to Wolfe's Murder conviction, and by including a jail-time credit of 284 days. The judgment should also be corrected to reflect that one of the charges in the indictment was dismissed by nolle prosequi. Accordingly, the order is Reversed, and this cause is Remanded for further proceedings.

I. The Course of Proceedings

{¶ 2} Wolfe was charged with Aggravated Murder, in violation of R.C. 2903.01(B), and with Aggravated Robbery, in violation of R.C. 2913.02, as a result of the 1993 shooting death of Todd Grills. *State v. Wolfe*, 2d Dist. Montgomery No. 14420, 1995 WL 140717, * 1 (March 29, 1995). His first trial ended in a hung jury. *Id.* His second trial resulted in his conviction for the lesser-included offense of Murder, with a firearm specification. *Id.* Our opinion recites that Wolfe was acquitted of Aggravated Robbery. Information supplied by the parties in their briefs suggests that the Aggravated Robbery charge was dismissed at the request of the State by an entry of nolle prosequi dated January 20, 1994, five days before the judgment of conviction, but entered on the journal January 31, 1994, six days after the judgment of conviction. He was sentenced to fifteen years to life for Murder, and to three years on the firearm specification. *Id.* He appealed; we affirmed. *Id.*

{¶ 3} In 2014, Wolfe filed the motion that is the subject of this appeal, contending that the 1994 judgment entry is defective in a number of respects. The trial court

overruled Wolfe's motion. He appeals.

II. The Trial Court Should Have Corrected the Judgment Entry

{¶ 4} Wolfe's sole assignment of error is as follows:

THE TRIAL COURT ERRED IN OVERRULING
APPELLANT'S MOTION TO CORRECT TERMINATION ENTRY.

{¶ 5} Wolfe first contends that the judgment entry should have been entitled as a judgment entry; it was entitled, as is the custom in the Montgomery County Common Pleas Court, "termination entry." We agree with the State that it matters not what the entry was entitled; it clearly is a judgment entry, reciting therein that Wolfe was convicted of Murder, with a firearm specification, and that he was sentenced to fifteen years to life for Murder, with an additional term of three years for the firearm specification, to be served consecutively to, and prior to, the indefinite Murder term.

{¶ 6} Wolfe next argues that:

The 1994 entry does not recite Mr. Wolfe's plea, the fact that the conviction was the result of a jury trial, the statutory reference for murder, the amount of the court costs, nor the number of days credit for time served.¹

{¶ 7} Unless a plea is the basis for a conviction, recitation of the plea is not required. *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163, ¶ 16, 18. The State concedes, and we agree, however, that the judgment entry should be amended to reflect that Wolfe was convicted after a jury trial, to include reference to the

¹ The entry provided for an award of court costs, and for the allowance of jail-time credit, but left both amounts blank.

statutory section number of the offense of which Wolfe was convicted, to include the amount of court costs, and to include the jail-time credit amount of 284 days.

{¶ 8} Next, Wolfe contends that the judgment entry is deficient because it does not address the fact that a previous trial on the charges in the indictment resulted in a hung jury. We reject this argument. It is the “foundation for a conviction” that “is the focus of Crim.R. 32(C).” *Id.*, ¶ 16. The foundation of Wolfe’s conviction is the jury’s verdict of guilty at his second trial. The hung jury at his first trial has nothing to do with his conviction.

{¶ 9} In his reply brief, Wolfe argues that the Aggravated Robbery charge remained pending when the judgment entry was filed, which deprived it of the status of a final appealable order. Of course, the judgment became final when the nolle prosequi of the Aggravated Robbery charge was entered on January 31, 1994. However, “[o]nly one document can constitute a final appealable order.” *State v. Baker*, supra, ¶ 17. We conclude, therefore, that when the trial court corrects its judgment entry herein, it should include in the corrected judgment entry a reference to the nollied Aggravated Robbery charge.

{¶ 10} Wolfe’s sole assignment of error is sustained.

III. Conclusion

{¶ 11} Wolfe’s sole assignment of error having been sustained, the order of the trial court overruling Wolfe’s motion to correct the judgment entry is Reversed, and this caused is Remanded for further proceedings consistent with this opinion.

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FROELICH, P.J., and WELBAUM, J., concur.

Copies mailed to:

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