[Cite as *State v. Madison*, 2021-Ohio-2358.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

ALFONDA MADISON,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0047

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 16 CR 750

BEFORE:
Carol Ann Robb, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:
Affirmed.

Atty. Paul J. Gains, Mahoning County Prosecutor, *Atty. Ralph M. Rivera,* Assistant Chief, Criminal Division, Mahoning County Prosecutor's Office, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee and

Atty. Elliousa Nemer, Rhys B. Cartwright 502 & Assoc., 42 N. Phelps Street, Youngstown, Ohio 44503, and *Atty. Rhys Cartwright-Jones,* 42 N. Phelps Street, Youngstown, Ohio 44503, for Defendant-Appellee.

Dated: June 24, 2021

Robb, J.

{¶1} Defendant-Appellant Alfonda R. Madison appeals the judgment of the Mahoning County Common Pleas Court entered in case number 16 CR 750 after the court found he violated the terms of his community control, which had been imposed for a third-degree felony and a fourth-degree felony. He contends the admission of the police officer's testimony as to what the victim said when the officer arrived at the scene violated his right to confront witnesses. For the following reasons, this argument is overruled, and the trial court's judgment is affirmed.

STATEMENT OF THE CASE

{¶2} On July 7, 2016, Appellant was indicted for five felonies, resulting in case number 16 CR 750. He pled guilty to third-degree-felony violation of a protection order and fourth-degree-felony menacing by stalking. *See* R.C. 2919.27(A)(1),(B)(4) and R.C. 2903.211(A)(1),(B)(2)(a). As part of the plea agreement, the state dismissed the other three counts and agreed to recommend community control after Appellant served an additional 90 days in jail.

{¶3} The August 4, 2017 plea hearing proceeded at the same time as the plea hearing in case number 17 CR 514. In the latter case, Appellant pled guilty to four counts of fifth-degree-felony nonsupport of dependents, and the state recommended community control.

{¶4} In an August 30, 2017 judgment entry in 16 CR 750, the court sentenced Appellant to five years of community control. The first 326 days was to be served in jail; with 236 days of credit for time served, this resulted in 90 additional days. He was ordered to complete an anger management class through a day reporting program, pay child support as required by case number 17 CR 514, obtain employment, and have no contact with the victim. Appellant was advised if he violated community control, the court could

impose a sentence of 36 months for the offense of violation of a protection order and 18 months for the offense of menacing by stalking.

{¶5} A separate judgment entry was filed the same day in 17 CR 514, sentencing Appellant to five years of community control and advising him a violation of community control could result in the imposition of a 12-month sentence on each of the four counts of nonsupport of dependents.

{¶6} On November 7, 2019, the state filed a motion to revoke community control in both cases, alleging Appellant violated the first condition of his community control, which required him to obey all laws. The motion alleged Appellant caused or attempted to cause physical harm to S.M. (a named female) and threatened S.M. with physical harm on November 6, 2019.

{¶7} The probable cause hearing was held on November 19, 2019, after the originally scheduled hearing was continued. The violation hearing was held on February 5, 2020. The victim did not appear for either hearing.

{¶8} A parole officer from the Adult Parole Authority testified and identified the conditions of community control signed by Appellant and explained the first condition included a requirement to obey all laws. (Vio.Tr. 15-16); (St.Ex. 1) (this exhibit shows another condition barred Appellant from having control over a firearm). The officer said he filed the probation violation upon learning Appellant was arrested and charged in the Youngstown Municipal Court with domestic violence against S.M. (Vio.Tr. 16-17, 25, 35). He noted this was a different victim than in the menacing by stalking case; he also noted the domestic violence case was eventually dismissed by the municipal court after S.M. failed to appear. (Vio.Tr. 17-18). The parole officer said Appellant lived with S.M. and multiple children at a named address on Euclid Avenue in Youngstown, which the officer visited on multiple occasions. (Vio.Tr. 25-26, 31, 35). He agreed Appellant successfully performed his supervision obligations until his domestic violence arrest, noting Appellant completed anger management through a day-reporting program and reported his employment status and changes. (Vio.Tr. 27-32).

{¶9} A 911 supervisor testified to introduce an audio disc of the 911 call made by S.M. on November 6, 2019 just after 1:00 a.m. (St.Ex. 2, Call 6). The caller's voice was quiet (as if she was trying not to be overheard). After a whimper, she reported, "my

child's father pulled out a gun on me" during an argument. She named the perpetrator, provided a description, and identified herself by first name. She stated Appellant was still at the Euclid residence with three children and she was at her mother's neighboring property. The victim also said Appellant still had the gun on his person when she left, describing it as a Glock 9mm handgun with a laser sight, which she was "pretty sure" was loaded. After asking if the police would be there soon, she sounded relieved when the dispatcher said they were just arriving and she should look for them. When S.M. said she was scared, the dispatcher instructed her to go out and meet them.

{¶10} A Youngstown police officer said he and other officers were dispatched to the Euclid Avenue address for a domestic fight while he was on the midnight shift. The victim approached him from her mother's house, which was next door to the house where she lived with Appellant. (Vio.Tr. 49-50). More specifically, when the officer alighted from his cruiser, S.M. ran up to him crying and said the father of her child "pulled a gun on her and he threatened to kill her" because he was mad about text messages from a male co-worker which Appellant discovered when he went into her phone. (Vio.Tr. 49-50). The officer identified three photographs of the victim "showing us her injuries from the assault." (Vio.Tr. 51). These photographs depicted two or three fingertip-sized bruises on the victim's inner arm.

{¶11} The police briefly searched the house for the gun with the consent of both S.M. and Appellant. The police officer said the "[h]ouse had a lot of clothes and it was kind of junky, and we just couldn't find it." (Vio.Tr. 52, 62). He identified Appellant as the person he arrested at the scene for domestic violence. (Vio.Tr. 53, 56).

{¶12} An investigator testified to obtaining the jail call log and recorded jail calls placed by Appellant to the phone number S.M. provided to the police. (Vio.Tr. 56, 70); (St.Ex. 7, 8). Appellant placed over 30 calls to S.M.'s number in the first month of his incarceration. Excerpts of four phone calls were played for the jury.

{¶13} In a November 8, 2019 call, Appellant said: he was in counseling; he learned from an anger management class that he had too many insecurities and not enough trust in the person he loved the most; this may not end well for the kids; it was his fault; he loved her and wanted to win her heart back; he understood her anger; and she had every right to be mad at him. (Vio.Tr. 80, Call 2 at the cited times).

{¶14} In a November 12 call, he twice said if she did not show up for the court date, the case would be dropped. He twice prompted her to let him out of incarceration by not going to court and said he could help with the kids and Christmas. He asked if she was trying to keep him incarcerated and noted he was in counseling. (Vio.Tr. 80-81, Call 7 at the cited times).

{¶15} In a November 15 call, he asked her to answer him as to whether she would fail to appear in court, stating all he wanted to do was "make it right." (Vio.Tr. 81, Call 10 at the cited time).

{¶16} In a November 19 call, he asked if she was going to the hearing, stating this was a "wake up call" and he loved her and did not want to lose her. (Vio.Tr. 82, Call 15 at the cited times).

{¶17} Lastly, Appellant testified in his own defense. He said on November 6, 2019, S.M. was his fiancée and they lived at the Euclid Avenue address with their child. Their five non-mutual children lived with them as well. He said he took care of the children while she was at work and paid half of the bills. He acknowledged they had an argument, claiming she told him she was in a car accident and returned home with damage to her vehicle, such as a broken driver's side window. (Vio.Tr. 95). He said the argument escalated as the topic turned to their phones.

{¶18} Appellant claimed: S.M. gave him her phone; he looked through it; they argued about what he saw; S.M. tried to take his phone; and he resisted. (Vio.Tr. 96-97). He testified he did not hit, push, or grab her and did not cause the marks on her arm or pull a gun on her. (Vio.Tr. 92-93, 96-97, 100). When he returned her phone, she left the house (while the children stayed). (Vio.Tr. 97-98). Appellant further asserted he did not leave the house between the time S.M. left and the time the police arrived. He acknowledged providing consent to search and estimated the police searched for over an hour (contesting the officer's description of the search as brief). (Vio.Tr. 100).

{¶19} When asked why he said he "fucked up bad" on a jail call to S.M., Appellant did not provide a relevant explanation. When asked why he told S.M. she had every right to be angry, he testified he should not have argued with her. (Vio.Tr.101). Appellant acknowledged he saw a text message from a coworker telling S.M. he cared about her. (Vio.Tr. 108). He confirmed his prior felony convictions, which included a prior felonious

assault (in addition to the felonies for which community control had been imposed). (Vio.Tr. 113-114).

{¶20} The court found Appellant violated his community control. A joint sentencing hearing proceeded on March 12, 2020. In 16 CR 750, the court sentenced Appellant to three years for third-degree-felony violation of a protection order and one year for fourth-degree-felony menacing by stalking, to run consecutively for a total of four years. In a separate sentencing entry filed in 17 CR 514, the court sentenced Appellant to one year on each of the four counts of nonsupport of dependents, to run concurrently with each other (and with the sentence in 16 CR 750).

{¶21} On April 1, 2020, Appellant filed a notice of appeal in case number 16 CR 750, which was assigned the within appeal number. Likewise, he attached the March 13, 2020 sentencing entry in 16 CR 750 to the notice of appeal. An appeal was not filed in 17 CR 514, as explained in our discussion of assignment of error two.

ASSIGNMENT OF ERROR ONE: CONFRONTATION CLAUSE

{¶22} Appellant's first assignment of error provides:

"Admission of testimonial statements made by the alleged victim violated Mr. Madison's right to confront witnesses against him as guaranteed by the 6th Amendment to the United States Constitution."

{¶23} Assuming arguendo the confrontation clause precedent cited by the parties applied to the violation hearing, Appellant's argument is without merit. The confrontation clause law reviewed infra would permit the challenged testimony in a criminal prosecution as there was an ongoing emergency when the officer obtained a brief recitation of facts on his arrival at the scene of an ongoing emergency and the primary purpose of the encounter was not to gather evidence for later court proceedings.

{¶24} The confrontation clause of the Sixth Amendment to the United States Constitution guarantees: "In all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him * * *." The clause applies to testimonial statements in federal and state prosecutions. *Crawford v. Washington*, 541 U.S. 36, 42, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). Testimonial statements of a witness who did not appear at trial are not admissible under the confrontation clause (unless the defendant had a prior opportunity for cross-examination and the witness later became unavailable

to testify). *Id.* at 53-54 (holding the statement of the defendant's wife suggesting he did not act in self-defense was testimonial where she was *Mirandized* and questioned at the police station after the defendant was arrested for stabbing a man).

{¶25} A statement is testimonial if the circumstances objectively indicate there was no ongoing emergency and the primary purpose of the interrogation was to establish past events potentially relevant to later criminal prosecution. *Hammon v. Indiana (Davis v. Washington)*, 547 U.S. 813, 822, 26 S.Ct. 2266, 165 L.Ed.2d 224 (2006). The statement can be labeled non-testimonial even if it was made during a police interrogation if the circumstances objectively indicate the primary purpose of the interrogation was to enable police to assist in meeting an ongoing emergency. *Id.*

{¶26} In other words, if it objectively appears the primary purpose of an interrogation was to respond to an ongoing emergency, then the purpose of the interrogation was not to create a record for trial and the statement would not fall within the scope of the confrontation clause. *Michigan v. Bryant*, 562 U.S. 344, 358, 131 S.Ct. 1143, 179 L.Ed.2d 93 (2011). "[W]hen a statement is not procured with a primary purpose of creating an out-of-court substitute for trial testimony * * *, the admissibility of a statement is the concern of state and federal rules of evidence, not the Confrontation Clause." *Id.* at 358-359.

{¶27} The existence or non-existence of an ongoing emergency, although among the most important considerations, is one factor in determining the primary purpose of an interrogation. *Id.* at 370. The evaluation of "whether an emergency exists and is ongoing is a highly context-dependent inquiry." *Id.* at 363. As the test is objective, the relevant inquiry does not assess the actual purpose of the individuals involved in the encounter but rather the purpose a reasonable participant would have possessed, without resort to hindsight. *Id.* at 360, fn. 8.

{¶28} "[T]here may be *other* circumstances, aside from ongoing emergencies, when a statement is not procured with a primary purpose of creating an out-of-court substitute for trial testimony." *Id.* at 358. The court should consider circumstances such as: the location (an interrogation occurring at or near the scene versus at the police station); the formality of the situation and the interrogation; the statements and actions of

all involved; the nature of the questions; and even "standard rules of hearsay, designed to identify some statements as reliable * * *." *Id.* at 358-361, 366, 377.

{¶29} The Court subsequently pointed out this precedent did not mean the confrontation clause bars every statement that satisfies the primary purpose test: "We have recognized that the Confrontation Clause does not prohibit the introduction of out-of-court statements that would have been admissible in a criminal case at the time of the founding. * * * Thus, the primary purpose test is a necessary, but not always sufficient, condition for the exclusion of out-of-court statements under the Confrontation Clause." *Ohio v. Clark*, 576 U.S. 237, 135 S.Ct. 2173, 2180-2181, 192 L.Ed.2d 306 (2015) (citing forfeiture by wrongdoing as an example).

{¶30} Appellant states the victim's statements to the police officer which incriminated him were testimonial and thus barred by the confrontation clause as she failed to appear at trial and he had no prior opportunity to cross-examine her (as she did not testify at the probable cause hearing either). He claims the victim's statements at the scene should be classified as being the result of a police interrogation related to past criminal conduct rather than to enable police assistance to meet an ongoing emergency.

{¶31} He distinguishes the victim's admissible statements in the 911 call from her statements upon the officer's arrival at the scene. *See Davis*, 547 U.S. 813 (where the victim's statements in the 911 call indicated the primary purpose was to enable police assistance to meet an ongoing emergency). Appellant argues this situation is more akin to the other part of this consolidated Supreme Court case, claiming there was no immediate threat to the victim as she had already separated herself from Appellant when the police arrived. *See Hammon*, 547 U.S. at 820-822 (excluding as testimonial the statements of a domestic violence victim made orally to police and memorialized in an affidavit at the scene while the police were questioning her after separating her from her husband at their house). Appellant points out he spoke to the police and provided consent to search for the gun; he says this shows a lack of ongoing emergency and the passage of time during the search.

{¶32} However, the officer did not testify to statements the victim made at the residence during or after the search, and the officer did not testify to any statements the victim made after Appellant's arrest (such as when she completed a domestic violence

form). Rather, the officer testified to the statements the victim made *immediately upon his arrival at the scene before Appellant had been neutralized*. Unlike in the *Hammon* case, the police did not have the suspect under control at the time of the victim's contested statement.

{¶33} The fact that the victim ran to the officers from the direction of a neighboring home does not lessen the emergency as the police still had to deal with Appellant, and the victim reported on the 911 call that there were children in the residence. The ongoing emergency provision does not only apply to the safety of the person relaying information but also to the responding officers and others. *Bryant*, 562 U.S. at 359 (the ongoing emergency "extends beyond an initial victim to a potential threat to the responding police and the public at large"). "An assessment of whether an emergency that threatens the police and public is ongoing cannot narrowly focus on whether the threat solely to the first victim has been neutralized because the threat to the first responders and public may continue." *Id.* at 363.

{¶34} The primary purpose of the statements during the encounter was to assist officers in quelling an ongoing emergency. The location of the police encounter with the victim was at or near the scene. It was outside in the middle of the night. The victim was still on the brief 911 call when the police arrived and was instructed by the 911 dispatcher to go meet the officer; she told dispatcher she was scared to approach her residence to wait for the officers. She ran to them and relayed a brief story about Appellant threatening her life and causing bruises on her arm. The officer said she was crying when she ran up to him. There were indicators suggesting an excited utterance, which is a confrontation clause factor in considering the totality of the encounter. *See Bryant*, 562 U.S. at 358-359 (consider the standard rules of hearsay in evaluating the circumstances surrounding the encounter); Evid.R. 803(2) ("A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition").

{¶35} Notably, it was said Appellant used a handgun to threaten her. The use of a weapon and type of weapon is pertinent to the existence of an emergency and the purpose of the statements. *See Bryant*, 562 U.S. at 364. A felon on community control was said to be armed with a gun he used to threaten the mother of his child. There were

children left in the house when the victim fled from Appellant. The encounter with the officer was informal; there was no indication of extensive questioning from the officer in evoking the victim's initial statements. From a reasonable officer's perspective, the emergency still existed, and the current conditions needed to be identified before approaching the house. The officer's primary purpose was to identify and end any threat.

{¶36} There was an ongoing emergency at the initial encounter, and the totality of the circumstances show the primary purpose of the initial and brief information gathering was not to collect information for later court proceedings. The officer's recitation of the victim's utterances when he first arrived at the scene would not violate the confrontation clause if it was in fact applicable to these proceedings.

{¶37} Although Appellant and the state both apply the United States Supreme Court's confrontation clause law to the officer's testimony on the victim's statement, and we addressed their arguments, the confrontation clause expressly only applies "[i]n all criminal prosecutions * * * ." Sixth Amendment, U.S. Constitution. It has been observed: "an overwhelming majority of federal circuit and state appellate courts that have addressed this issue have concluded that *Crawford* does not apply to a revocation of probation hearing." *State v. Miller*, 5th Dist. Morgan No. 19AP0003, 2020-Ohio-131, ¶ 15, quoting *State v. Esquilin*, 179 Conn.App. 461, 179 A.3d 238 (2018), fn. 10 (citing cases).

{¶38} The United States Supreme Court has applied a due process standard after finding the confrontation clause was inapplicable to a probation violation/revocation hearing. *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973). Even after the *Crawford* and *Davis/Hammon* line of cases, courts continue to apply the following holding in *Gagnon* to a probation revocation hearing: the defendant has "the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)." *Id.* at 786 (extending law on parole revocation hearing to probation revocation hearing), applying *Morrissey v. Brewer*, 408 U.S. 471, 489, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972).

{¶39} The good cause evaluation is a balancing test which weighs the defendant's interest in confronting the witness against the reason for the witness's absence and the reliability of the statement. *Miller*, 5th Dist. No. 19AP0003 at ¶ 17, citing *Esquilin*, 179

Conn.App. at 472. The Court in *Gagnon* noted: "we emphasize that we did not in *Morrissey* intend to prohibit use where appropriate of the conventional substitutes for live testimony, including affidavits, depositions, and documentary evidence" at the revocation hearing. *Gagnon*, 411 U.S. 778 at fn. 5.

{¶40} Here, the victim refused to appear after Appellant's multiple cajoling jail calls, which were played at the hearing for the court and outlined in our Statement of the Case above. Moreover, under a stricter confrontation clause test, we explained supra why Appellant's confrontation rights would not have been violated even if this had been a criminal prosecution. The good cause standard was satisfied.

{¶41} The state additionally points out the Rules of Evidence specifically say they do not apply to: "Proceedings for * * * sentencing; granting or revoking probation; proceedings with respect to community control sanctions * * *." Evid.R. 101(C)(3) (except rules on privilege). "In addition to the lowered standard of proof, probation-revocation hearings are not subject to the rules of evidence." *State v. Clark*, 7th Dist. Mahoning No. 12-MA-1, 2012-Ohio-5570, ¶ 9-11 (also stating the evidence showing a violation must be of a "substantial nature," and if the defendant is alleged to have violated community control by failing to obey the law, it is immaterial that the defendant was not convicted of an offense). *See also State v. Trice*, 9th Dist. Summit No. CV 29258, 2019-Ohio-5098, ¶ 22 (reliance on hearsay to prove community control violation was not fatal as the rules of evidence did not apply); *State v. Kerry*, 7th Dist. Belmont No. 00 BA 20 (July 20, 2001).

{¶42} The state nevertheless points out the 911 call and the jail calls demonstrate the victim's statements to the officer were not the only incriminating evidence presented at the violation hearing. *Citing State v. Reese*, 8th Dist. Cuyahoga No. 109055, 2020-Ohio-4747, ¶ 18 (noting some courts have said there is no reversible error from the presentation of typically inadmissible hearsay at the revocation hearing unless it was the only evidence presented). *But see State ex rel. Johnson v. Ohio Adult Parole Auth.*, 90 Ohio St.3d 208, 210, 736 N.E.2d 469 (2000) ("hearsay is admissible in revocation proceedings"), also citing *Gagnon* 411 U.S. 778 (the case extending parole revocation law to probation revocation proceedings). The state also argues the victim's contested statements would fall under a hearsay exception, such as the excited utterance exception in Evid.R. 803(2) ("A statement relating to a startling event or condition made while the

declarant was under the stress of excitement caused by the event or condition"). Regardless, there is no argument on a violation of the Rules of Evidence on hearsay. This assignment of error is overruled.

ASSIGNMENT OF ERROR TWO: SENTENCE IN 17 CR 514

{¶43} Appellant's second assignment of error contends:

"The trial court erred when it sentenced Defendant to one-year incarceration on each count of Nonsupport of a Dependent, a felony of the fifth degree, in violation of R.C. 2929.15(B)(1)(c)(i)."

{¶44} Appellant challenges the one-year concurrent sentences imposed on the four fifth-degree-felony counts of nonsupport of dependents in 17 CR 514. Although the sentence is within the available range for a felony of the fifth degree under R.C. 2929.14(A)(5), Appellant says his prison term for the community control violation could not exceed 90 days under the statutory provision stating:

> If the prison term is imposed for any technical violation of the conditions of a community control sanction imposed for a felony of the fifth degree or for any violation of law committed while under a community control sanction imposed for such a felony that consists of a new criminal offense and that is not a felony, the prison term shall not exceed ninety days.

Former R.C. 2929.15(B)(1)(c)(i) (amended effective 4/12/21). Appellant believes the allegations against him should be considered a technical violation and also says the allegation of a new offense would not have constituted a felony. A technical violation is considered "minor" or "immaterial." *See State v. Nelson*, __ Ohio St.3d __, 2020-Ohio-3690, __ N.E.3d __, ¶ 16-18.[1]

However, as the state points out, this is not an appeal from 17 CR 514. The notice of appeal resulting in the appeal now before this court was specifically labeled with case number 16 CR 750 and filed in that trial court case, with the March 13, 2020 sentencing entry in 16 CR 750 attached to the notice of appeal. Although the violation hearings were

[1] We note there was evidence Appellant committed the felony offense of having a weapon while under disability under R.C. 2923.13(A)(2),(B). *See* Indictment in 16 CR 750 (providing disability notice); R.C. 2901.01(A)(9)(a) (defining offense of violence), citing R.C. 2903.211 (menacing by stalking). Although not raised by Appellant but because the state's brief addresses the sentencing cap for a revocation on a fourth-degree felony, we also note the menacing by stalking in 16 CR 750 (the case that was appealed here) was an offense of violence, making the subsequent section inapplicable. *See* former R.C. 2929.15(B)(1)(c)(ii).

held jointly, separate final orders were issued in the two cases. Moreover, a notice of appeal was not filed in 17 CR 514, and thus our jurisdiction was not invoked under App.R. 3(A). As a notice of appeal was not filed in 17 CR 514, the record from that trial court case was not filed by the clerk in this appeal.

{¶45} It was conceded at oral argument that this assignment of error was not within our jurisdiction in this appeal. (We note the attorney who filed the brief was appointed after the notice of appeal was filed.) As the appeal before this court originated from a notice of appeal filed only in 16 CR 750, the sentence in 17 CR 514 is not before this court for review.

{¶46} However, it is observed the one-year stated prison term in 17 CR 514 was imposed concurrent to the four-year stated prison term in 16 CR 750, and the prison term in 17 CR 514 *has already been served*. A challenge to the correctness of a felony sentence where the defendant already served the sentence is moot. *State v. Verdream*, 7th Dist. Mahoning No. 02CA222, 2003-Ohio-7284, ¶ 13. *See also State v. Merritt*, 7th Dist. Jefferson No. 09 JE 26, 2011-Ohio-1468, ¶ 50. As such, even if there was not a jurisdictional bar to our consideration of the sentence in 17 CR 514 (or if a delayed appeal were to be attempted), we could not remedy the alleged error raised as to the sentence in 17 CR 514. Appellant's second assignment of error is dismissed.

{¶47} For the foregoing reasons, the trial court's judgment is affirmed

Donofrio, P J., concurs.

Waite, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.