

[Cite as *State v. Parker*, 2018-Ohio-3413.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 106529**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**VINCENT PARKER**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
VACATED AND REMANDED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-95-320034-ZA

**BEFORE:** E.A. Gallagher, A.J., McCormack, J., and Boyle, J.

**RELEASED AND JOURNALIZED:** August 23, 2018

**FOR APPELLANT**

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EILEEN A. GALLAGHER, A.J.:

{¶1} Defendant-appellant Vincent Parker appeals the judgment of the Cuyahoga County Court of Common Pleas ordering his Motion for Speedy Trial and Notice of Availability for Sentencing to be stricken. We vacate and remand.

### **Facts and Procedural History**

{¶2} A detailed examination of the lengthy procedural history of this case is set forth in this court's decision in *State v. Parker*, 8th Dist. Cuyahoga No. 82687, 2004-Ohio-2976. For the purposes of the present appeal, the relevant facts are that Parker pleaded guilty on January 29, 2003, to the sole count of murder and was sentenced to a prison term of 15 years to life.

{¶3} Parker's original sentencing entry contained a clerical error reflecting that he had been convicted of aggravated murder rather than murder. The trial court, however, on April 29, 2003, issued a nunc pro tunc entry which corrected that clerical error in Parker's original entry consistent with Crim.R. 36 and Parker's direct appeal was unaffected. *See, e.g., State v. Wilson*, 2d Dist. Montgomery No. 24352, 2011-Ohio-5990, ¶ 16, 21 (upholding the correction of a clerical error under nearly identical circumstances). Parker appealed his conviction to this court arguing that his statutory and constitutional speedy trial rights had been violated, that the trial court failed to comply with Crim.R. 11 in accepting his guilty plea and that he was denied effective assistance of counsel. We rejected Parker's arguments and affirmed his conviction. *Id.* at ¶ 42.

{¶4} On June 26, 2017, Parker filed a Motion to Withdraw Void Guilty Plea pursuant to Crim.R. 32.1 and requested a hearing. Parker argued in his motion that his 2003 guilty plea was the result of a mutual mistake of law, that his plea was coerced by the trial judge's participation in the plea bargaining process, that his trial counsel provided ineffective assistance of counsel

and that his plea was involuntary. On July 3, 2017, the trial court denied Parker's motion without conducting a hearing and denied a related motion seeking findings of fact and conclusions of law. We affirmed those judgments of the trial court finding Parker's arguments to be barred by res judicata. *State v. Parker*, 8th Dist. Cuyahoga No. 106062, 2018-Ohio-1847.

{¶5} However, during the pendency of that appeal, Parker filed a Motion for Speedy Trial and Notice of Availability for Sentencing in the trial court. The trial court ordered Parker's motion to be stricken on November 2, 2017, citing a lack of jurisdiction.

### **Law and Analysis**

#### **I. The Denial of Parker's Motion for Speedy Trial and Notice of Availability for Sentencing**

{¶6} In his first assignment of error Parker argues that the trial court erred in denying his motion. We are unpersuaded by Parker's arguments which seek to elevate a previously corrected clerical error in his original sentencing entry to a violation of his constitutional speedy trial rights. The parties agree and the record reflects that Parker pleaded guilty to a single count of murder and was sentenced appropriately for that offense. Parker's argument that he has not been sentenced for murder is without merit.

{¶7} However, we find that the trial court erred in striking Parker's motion during the pendency of our prior appeal. The general rule of law is that the trial court loses jurisdiction to take action in a cause after an appeal has been taken and decided except "to take action in aid of the appeal, until the case is remanded to it by the appellate court." *State ex rel. Special Prosecutors v. Judges, Belmont Cty. Court of Common Pleas*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162 (1978). The trial court does retain jurisdiction over issues "not inconsistent with the

appellate court's jurisdiction to reverse, modify, or affirm the judgment from which an appeal is taken." *Yee v. Erie Cty. Sheriff's Dept.*, 51 Ohio St.3d 43, 44, 553 N.E.2d 1354 (1990).

{¶8} In *State v. Drake*, 8th Dist. Cuyahoga No. 105908, 2017-Ohio-7328, we explained that where a court lacks jurisdiction to rule on a motion due to a pending appeal, the trial court lacks authority to deny the motion and must hold the motion in abeyance until the appeal is decided. *Id.* at ¶ 4. In this instance, the trial court should have held the motion in abeyance rather than striking it. *Id.*

{¶9} Parker's first assignment of error is sustained.

## **II. Sentencing**

{¶10} In his second and third assignments of error Parker raises challenges to his sentence that are outside the scope of the present appeal and otherwise barred by res judicata. In both assignments of error Parker again asserts that he was never sentenced for murder and that the remaining charges against him, which were nolle, were never resolved. His argument is derived from the aforementioned clerical error in his original sentencing entry and refuted by the transcript of his sentencing hearing wherein he was, in fact, sentenced for the charge of murder and all remaining charges were nolle. His argument is further dispelled by the docket and the corrected journal entry which was attached as Exhibit A to the state's brief in opposition to his motion and Exhibit C to Parker's own Motion to Impose Valid Sentence filed on February 12, 2010.

{¶11} Parker's second and third assignments of error are overruled.

{¶12} The judgment of the trial court striking Parker's motion for speedy trial and notice of availability for sentencing is vacated.

{¶13} Case remanded to the trial court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee 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 Cuyahoga County Court of Common Pleas 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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EILEEN A. GALLAGHER, ADMINISTRATIVE JUDGE

TIM McCORMACK, J., and  
MARY J. BOYLE, J., CONCUR