

court at the sentencing hearing. Finding merit to the appeal, we vacate the sentencing entry and remand with instructions for the trial court to enter a nunc pro tunc entry that accurately reflects the sentence that was imposed on the record.

{¶ 2} In May 2019, Sandidge pleaded guilty to attempted robbery in violation of R.C. 2923.02/2911.02(A)(3) as amended in Count 2 of the indictment; domestic violence in violation of R.C. 2919.25 as amended in Count 3 of the indictment; and tampering with evidence in violation of R.C. 2921.12(A) as amended in Count 6 of the indictment. The trial court subsequently sentenced Sandidge to one year of community control on each count, with a term at a community-based correctional facility. The court advised Sandidge that violation of the terms and conditions of the community control sanctions could result in more restrictive sanctions or a prison term of two years, as authorized by law.

{¶ 3} In October 2019, at a community control violation hearing, Sandidge was found to be in violation of his community control sanctions. The evidence at the hearing demonstrated that Sandidge had behavior issues at the community-based correctional facility; among other issues, he was observed on surveillance video helping inmates at the facility steal from the vending machine in the cafeteria.

{¶ 4} At the sentencing hearing, the trial court revoked Sandidge's community control and sentenced him to a total of 18 months incarceration: one year on Count 2, six months on Count 3, and 18 months on Count 6, to be served concurrently. The journal entry of sentencing, however, reflects that Sandidge was

sentenced to 18 months incarceration on Count 2, six months on Count 3, and one year on Count 6.¹ This appeal followed.

{¶ 5} On appeal, Sandidge contends that the trial court erred by imposing a sentence in the sentencing entry that differs from the sentence pronounced on the record at the sentencing hearing. The state concedes that the journal entry of sentencing does not reflect the sentenced ordered at sentencing.

{¶ 6} A trial court cannot impose a sentence in the sentencing entry that differs from what it imposed at the sentencing hearing. *State v. Vaughn*, 8th Dist. Cuyahoga No. 103330, 2016-Ohio-3320, ¶ 18. Under Crim.R. 43, a criminal defendant has the right to be present at every stage of the criminal proceedings, including the imposition of sentence and any modification of a sentence. Crim.R. 43(A)(1). Thus, “[b]ecause the defendant’s presence is required when the court imposes sentence, the trial court errs when its judgment entry of sentence differs from the sentence that it announced at the sentencing hearing in the defendant’s presence.” *Vaughn* at *id.*, quoting *State v. Patrick*, 4th Dist. Lawrence No. 12CA16, 2013-Ohio-3821, ¶ 10.

{¶ 7} Crim.R. 36 authorizes the trial court to correct “[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission * * * at any time.” “A trial court may use a nunc pro tunc entry to correct mistakes in judgments, orders, and other parts of the record

¹ Although not relevant to this appeal, the sentencing entry also reflects that Sandidge was to receive jail-time credit of 223 days.

so the record speaks the truth.” *State v. Spears*, 8th Dist. Cuyahoga No. 94089, 2010-Ohio-2229, ¶ 10. A nunc pro tunc order is limited to memorializing what the trial court actually did at an earlier point in time, such as correcting an order that fails to reflect the trial court’s true action. *Id.*, citing *State v. Gruelich*, 61 Ohio App.3d 22, 24, 572 N.E.2d 132 (9th Dist.1988). Accordingly, a nunc pro tunc entry may be used to correct a sentencing entry to reflect the sentence the trial court imposed at a sentencing hearing. *State v. Ferrell*, 8th Dist. Cuyahoga No. 85821, 2005-Ohio-5992, ¶ 21.

{¶ 8} The trial court’s sentencing entry in this case clearly contains a clerical error; the trial court simply reversed the sentences it had imposed on Counts 2 and 6. Accordingly, Sandidge’s assignment of error is sustained. The trial court is ordered to issue a nunc pro tunc order to correct the sentencing entry to reflect the sentence it imposed at the sentencing hearing: one year incarceration on Count 2, six months on Count 3, and 18 months on Count 6, to be served concurrently, for a total term of 18 months. *See Spears* at ¶ 12 (A nunc pro tunc entry may be used to correct a sentencing entry to reflect the sentence the trial court imposed upon a defendant at the sentencing hearing; the defendant’s presence is not required for entry of the nunc pro tunc order because the nunc pro tunc order does not modify the original sentence.); *State v. Hall*, 8th Dist. Cuyahoga No. 96791, 2011-Ohio-6441, ¶ 22 (The defendant’s right to be present is not abridged when the trial court issues a nunc pro tunc entry to correct a clerical

error so that the journal entry accurately reflects the original sentence imposed at the sentencing hearing and does not modify the sentence.).

{¶ 9} Vacated and remanded.

It is ordered that the parties share equally the 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.

KATHLEEN ANN KEOUGH, JUDGE

PATRICIA ANN BLACKMON, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR