

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

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| STATE OF OHIO, | : | O P I N I O N |
| Plaintiff-Appellee, | : | |
| - vs - | : | CASE NO. 2011-A-0013 |
| ARTHUR A. GREENTER, | : | |
| Defendant-Appellant. | : | |

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 2007 CR 433.

Judgment: Affirmed in part; reversed in part and remanded.

Thomas L. Sartini, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellee).

Arthur A. Grenter, pro se, PID: 552-453, Marion Correctional Institution, P.O. Box 57, Marion, OH 43301-0057 (Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Appellant, Arthur A. Grenter, appeals the decision of the Ashtabula County Court of Common Pleas denying his Motion for Revised Judgment Entry of Sentence. Because this motion was not the appropriate vehicle for effecting the result Mr. Grenter desired, and the substantive matters he asserts on appeal are barred by res judicata, we affirm the decision of the trial court as to Mr. Grenter's substantive claims. However, we remand the case to the trial court for the very limited purpose of entering a nunc pro

tunc judgment entry to reflect the amount of restitution the court imposed upon Mr. Greuter in open court, and on the record, during the sentencing hearing.

{¶2} Substantive Facts and Procedural History

{¶3} On June 9, 2008, Mr. Greuter was found guilty, by way of an *Alford* plea, of Complicity to Arson in violation of R.C. 2923.03(A)(1) and 2909.03(A)(a)(b)(2)(b), and Attempted Felonious Assault in violation of R.C. 2923.02(A) and 2903.11(A). A sentencing hearing was held on August 6, 2008, during which Mr. Greuter was sentenced to an aggregate term of six and one-half years in prison, and ordered to pay restitution in the amount of \$239,989. A judgment entry upon the sentence was filed on August 7, 2008; however, the exact amount of restitution ordered was left out of the entry. No direct appeal was taken.

{¶4} In August 2009, Mr. Greuter filed a Crim.R. 32.1 Motion to Withdraw Plea; his motion was denied for failure to demonstrate manifest injustice, and no direct appeal was taken. Over a year later, on November 8, 2010, Mr. Greuter filed a Motion for a Revised Judgment Entry with the trial court. This motion was denied, and Mr. Greuter timely appealed. He brings two assignments of error:

{¶5} “[1.] The trial court erred to the prejudice of the Defendant-Appellant in denial of the Defense Motion for a Revised Judgment Entry of Sentence by Judgment Entry of January 14, 2011.

{¶6} “[2.] The Court has a duty and inherent authority to issue a Nunc Pro Tunc Judgment Entry to make the record conform to that which already occurred in Open Court August 6, 2008.”

{¶7} Mr. Greuter’s Appeal is Barred by Res Judicata

{¶8} Mr. Greuter brings an appeal from the denial of his pro se motion styled as a “Motion for a Revised Judgment Entry of Sentence Pursuant to Ohio Supreme Court Decisions in Dunn, McAllister, Culgan, and Baker,” filed over two years after the conclusion of his case at the trial court level. At the outset, we note that Mr. Greuter chose not to appeal his conviction or the denial of his earlier filed motion to withdraw his plea, nor has he sought a delayed appeal.

{¶9} Mr. Greuter’s assignments of error address the issue of conforming the judgment entry on sentence to reflect that which occurred in open court during his sentencing hearing. The arguments underlying his motion and appellate briefs, and the relief sought from this court, however, delve into subjects well beyond nunc pro tunc orders, treading into substantive matters reserved for direct appeals.

{¶10} The essence of his appeal is that because the sentencing entry orders restitution but does not set forth the amount of restitution that was indeed stated in open court at the sentencing hearing, the sentencing order is interlocutory. In his motion before the trial court, Mr. Greuter asked that a revised entry be journalized “rectifying the Interlocutory restitution portion by Deletion.” His motion before the trial court also raised other “errors,” namely a “failure” to consider his present and future ability to pay restitution and sanctions, and “error” in ordering restitution to an insurance company.

{¶11} “[A] convicted defendant is precluded under the doctrine of res judicata from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial which resulted in that judgment of conviction or on appeal from that judgment.” *State v. Szefcyk* (1996), 77 Ohio St.3d 93, 96.

{¶12} Mr. Greuter could have raised any issue regarding his conviction, the substance of the sentence, and the sentencing entry, or the sentencing hearing itself, on direct appeal; that would have been the proper time and vehicle. See *State v. Mordas*, 11th Dist. No. 2009-P-0028, 2010-Ohio-196 (the trial court entertained the appellant's assertion that it had failed to adhere to the requirements of R.C. 2929.18 in ordering restitution). Mr. Greuter, however, did not bring such an appeal. He may not now find his way into court through a side entrance and upon the back of what appears to be a pre-textual motion and appeal therefrom.

{¶13} Mr. Greuter argues that his sentence is not yet an appealable order, arguing instead that the judgment entry is interlocutory in nature. We find this argument unpersuasive, as his case is distinguishable from all of the authorities he cites to support this contention. Unlike the cases cited, where the trial court failed to even determine the amount of restitution, the trial court *sub judice* did, in fact, determine the amount of restitution to be paid. The specified amount, however, was inadvertently excluded from the judgment entry – constituting a mere clerical error in an otherwise final appealable order.

{¶14} Mr. Greuter's first assignment of error is without merit.

{¶15} **The Trial Court Retains Jurisdiction to Correct the Clerical Error**

{¶16} Although Mr. Greuter's substantive claims are barred by the application of the doctrine of *res judicata*, we note that a discrepancy does exist between the sentence the trial court ordered in open court and the judgment entry on sentence. Specifically, the trial court ordered Mr. Greuter to pay restitution in the sum of \$239,989

during the sentencing hearing; however, the judgment entry on sentence indicated only that restitution was to be paid, failing to include the specific amount.

{¶17} Crim.R. 36 states that “[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court *at any time*.” (Emphasis added.) These nunc pro tunc entries “are limited in proper use to reflecting what the court actually decided, not what the court might or should have decided.” *State ex rel. Fogle v. Steiner* (1995), 74 Ohio St.3d 158, 164. We have held that where “the court rendered its true judgment during the sentencing hearing and the Judgment Entry inadvertently failed to reflect that true judgment,” a nunc pro tunc entry is the appropriate remedy. *State v. McAdams*, 11th Dist. No. 2010-L-012, 2011-Ohio-157, ¶19. Where there has been a failure to comply with Crim R. 32(C) due to a mere oversight, as herein, the trial court is vested with “specific, limited jurisdiction to issue a new sentencing entry to reflect what the court had previously ruled ***.” *State ex rel. DeWine v. Burge* (2011), 128 Ohio St.3d 236, 2011-Ohio-235, ¶19.

{¶18} A review of the record indicates that the trial court, during the sentencing hearing, ordered Mr. Greuter to pay restitution in the specific amount of \$239,989. The judgment entry, however, indicates that restitution was ordered, but fails to indicate in what amount. Because the trial court’s intention is quite clear from the record, and the missing amount on the judgment entry is clearly a mere clerical error, we find that Mr. Greuter’s second assignment of error has merit, but not for the reasons asserted, and not to the extent of the ultimate relief sought, that is, the deletion of the restitution order. Thus, we remand this case to the trial court for the limited purpose of the trial court

issuing a nunc pro tunc entry properly reflecting the dollar amount of \$239,989 the trial court imposed upon Mr. Greuter in open court, and on the record, during the sentencing hearing. We find all other matters barred by the doctrine of res judicata.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.