

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

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2016-L-118
DAVID V. ROCK, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas.
Case No. 14 CR 000525.

Judgment: Appeal dismissed.

Charles E. Coulson, Lake County Prosecutor, and *Karen A. Sheppert*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

David V. Rock, Jr., pro se, PID: A663-040, Mansfield Correctional Institution, P.O. Box 788, 1150 North Main Street, Mansfield, OH 44901 (Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} Appellant, David V. Rock, Jr., appeals from the October 19, 2016 judgment of the Lake County Court of Common Pleas, denying his request to correct or modify the record. For the following reasons, the appeal is dismissed.

{¶2} On March 30, 2015, the Lake County Court of Common Pleas entered a judgment convicting appellant of one count of operating a vehicle under the influence (“OVI”), a third-degree felony, in violation of R.C. 4511.19(A)(1)(a) and an

accompanying R.C. 2941.1413 specification for having been convicted of five or more OVI offenses within the previous twenty years. Appellant was sentenced to serve a prison term of thirty-six months for the underlying OVI and four years for the repeat-offender specification, to run consecutive to each other and consecutive to the sentence imposed by the Ashland County Court of Common Pleas in case No. 10-CRI-081.

{¶3} Appellant challenged his sentence on appeal from the trial court's March 30, 2015 judgment. *State v. Rock*, 11th Dist. Lake No. 2015-L-047, 2015-Ohio-4639. We held the trial court failed to make the required findings pursuant to R.C. 2929.14(C)(4) in order to run appellant's sentences for the OVI and specification consecutive to his Ashland County sentence. *Id.* at ¶11.

{¶4} Upon remand from this court, the trial court held a hearing on December 7, 2015. The trial court entered judgment on December 8, 2015, and declined to make the required findings for imposing consecutive sentences. The trial court ordered appellant's sentence for the OVI and specification be served concurrently with the sentence imposed by the Ashland County Court of Common Pleas. *State v. Rock*, 11th Dist. Lake No. 2016-L-011, 2016-Ohio-8516, ¶4.

{¶5} Appellant filed a motion for leave to file a delayed appeal from the trial court's December 8, 2015 judgment, which this court granted. *Id.* at ¶5. We affirmed the trial court's judgment. *Id.* at ¶22.

{¶6} Appellant sent the trial court a letter dated October 5, 2016, contending that portions of the transcript from his February 23, 2015 change of plea hearing and March 26, 2015 sentencing hearing were not transcribed. Appellant argued that dashes in the transcript reflect portions of the hearing that were omitted. The trial court

construed appellant's letter as a request to correct or modify the record. After reviewing the applicable portions of the transcript and comparing them to a recording of the hearings, the trial court found the dashes were used as a grammatical tool rather than to represent portions of the hearing that were not transcribed. The trial court denied appellant's request to modify the record in an order filed October 19, 2016.

{¶7} On November 17, 2016, appellant filed the instant appeal from the trial court's October 19, 2016 order. Appellant raises two assignments of error on appeal:

[1.] The trial court committed prejudicial error by not correcting the truncated material in transcripts upon request pursuant to App.R. 9(E). This is a violation of the Fifth and Fourteenth Amendment[s] to the United States Constitution.

[2.] It is an abuse of discretion for the trial court to ignore mistakes in the transcripts and indictment, that increase recidivism rates. Higher rate of recidivism, requires an increased sentence. Misstated information prejudiced the appellant. This is a violation of the Fifth, Sixth, and Fourteenth Amendment[s] to the United States Constitution. [sic.]

{¶8} Appellee, the state of Ohio, raises a jurisdictional issue and argues the trial court's October 19, 2016 order denying appellant's request to modify or correct the record is not a final, appealable order. Appellee maintains the order does not affect a substantial right because appellant's sentencing appeal has concluded.

{¶9} The Ohio Constitution grants courts of appeals "jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders[.]" Article IV, Section 3(B)(2). "An appellate court can review only final orders, and without a final order, an appellate court has no jurisdiction." *Supportive Solutions, L.L.C. v. Electronic Classroom of Tomorrow*, 137 Ohio St.3d 23, 2013-Ohio-2410, ¶10 (citations omitted).

{¶10} R.C. 2505.02(B) provides, in pertinent part, that an order “is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

* * *

(4) An order that grants or denies a provisional remedy and to which both the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶11} A substantial right is defined as “a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.” R.C. 2505.02(A)(1). A provisional remedy is defined as an ancillary proceeding, R.C. 2505.02(A)(3), which is a proceeding “that is attendant upon or aids another proceeding.” *State v. Anderson*, 138 Ohio St.3d 264, 2014-Ohio-542, ¶47, quoting *State v. Muncie*, 91 Ohio St.3d 440, 449 (2001).

{¶12} Appellant requested that the trial court correct the record pursuant to App.R. 9(E), which states, in part: “If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by the trial court and the record made to conform to the truth.” At the time he

requested the record be corrected, however, there was no pending appeal, and appellant's direct appeal from the trial court's judgment of conviction had already concluded. In essence, there was no pending case to which a motion to correct the record would apply. We therefore conclude that, based on the facts of this case, the trial court's order did not affect a substantial right or determine the action with regard to a provisional remedy.

{¶13} The trial court's October 19, 2016 order was not a final, appealable order, and this court does not have jurisdiction to consider appellant's assignments of error.

{¶14} For the foregoing reasons, the appeal is dismissed.

CYNTHIA WESTCOTT RICE, P.J.,

THOMAS R. WRIGHT, J.,

concur.