

[Cite as *State v. Morganstern*, 2012-Ohio-4330.]

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 12CA0016

Appellee

v.

CAROL A. MORGANSTERN

APPEAL FROM JUDGMENT
ENTERED IN THE
WAYNE COUNTY MUNICIPAL COURT
COUNTY OF WAYNE, OHIO
CASE No. B87-6-1083

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 24, 2012

WHITMORE, Presiding Judge.

{¶1} Defendant-Appellant, Carol Morganstern (aka Carol Bray), appeals from the judgment of the Wayne County Municipal Court. This Court affirms.

I

{¶2} When Morganstern applied for a concealed handgun license in 2011, her application was denied because her background check disclosed a misdemeanor conviction for the possession of marijuana in 1987. In 2012, Morganstern filed a motion to vacate her 1987 conviction on the basis that it contained a clerical error. The trial court denied her motion without a hearing.

{¶3} Morganstern now appeals from the trial court’s denial of her motion to vacate and raises one assignment of error for our review.

II

Assignment of Error

THE TRIAL COURT ERRED BY SUMMARILY DENYING MS. BRAY'S MOTION TO VACATE JUDGMENT WITHOUT A HEARING.

{¶4} In her sole assignment of error, Morganstern argues that the trial court erred by denying her motion to vacate her 1987 conviction without a hearing. We disagree.

{¶5} Trial courts may not reconsider valid final judgments of conviction, but do retain jurisdiction to correct void sentences and clerical errors. *State v. Stovall*, 9th Dist. No. 07CA0027-M, 2008-Ohio-272, ¶ 5. “Crim.R. 36 allows a court to correct a clerical mistake in a judgment at any time.” *State v. Rusu*, 9th Dist. No. 25597, 2012-Ohio-2613, ¶ 17. The “appropriate remedy” for a clerical mistake is “generally a nunc pro tunc entry.” (Internal quotations and citations omitted.) *State v. Battle*, 9th Dist. No. 23404, 2007-Ohio-2475, ¶ 5. Yet, “nunc pro tunc entries are limited in proper use to reflecting what the court actually decided[.]” *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 164 (1995).

{¶6} Morganstern sought to have her twenty-five year old conviction vacated due to a clerical error. Morganstern's motion to vacate contained a printout from the clerk of courts regarding her 1987 conviction and an affidavit from Morganstern. The only record the clerk of courts could produce was a computer printout listing Morganstern's charge, the dates of her offense and appearance, and the following notation: “6-29-87 waiver posted fine \$50. & \$28. cost rec# 19503.” In her affidavit, Morganstern averred that she was unaware of her 1987 conviction and “did not sign the waiver and pay the fine [or] * * * direct anybody to do the same on [her] behalf * * *.” Accordingly, the error Morganstern asserted in her motion was that she never executed a waiver of her appearance or paid the fine in her 1987 conviction, so someone else must have.

{¶7} The alleged error Morganstern raised in her motion to vacate was not a clerical error subject to correction under Crim.R. 36. “A ‘clerical mistake’ is a mistake, ‘mechanical in nature and apparent on the record, which does not involve a legal decision or judgment.’” *State v. Plant*, 9th Dist. No. 24118, 2008-Ohio-4424, ¶ 7, quoting *State v. Williams*, 6th Dist. No. L-02-1394, 2004-Ohio-466, ¶ 7. Morganstern asked the court to vacate her conviction because, according to Morganstern, she was never aware of it and never paid the fine associated with it. The error Morganstern sought to correct “was beyond the scope of the court’s power under Crim.R. 36.” *Plant* at ¶ 9. Morganstern essentially asked the court to reconsider its own valid final judgment of conviction. The court lacked authority to do so. *Stovall*, 2008-Ohio-272, at ¶ 5. Consequently, the trial court did not err by denying Morganstern’s motion without a hearing. Her sole assignment of error is overruled.

III

{¶8} Morganstern’s sole assignment of error is overruled. The judgment of the Wayne County Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Wayne County Municipal Court, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the

period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

MOORE, J.
DICKINSON, J.
CONCUR.

APPEARANCES:

KIRK A. MIGDAL, Attorney at Law, for Appellant.

DANIEL R. LUTZ, Prosecuting Attorney, and NATHAN R. SHAKER, Assistant Prosecuting Attorney, for Appellee.