

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-140380
	:	TRIAL NO. B-1101660
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
RODERICK MOORE,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); Loc.R. 11.1.1.

Defendant-appellant Roderick Moore was originally convicted of aggravated robbery with a firearm specification, robbery, and having weapons while under a disability. This court affirmed his convictions with one exception. We found a clerical error in the judgment entry. We stated, “Moore argues that the trial court erred in stating in the judgment entry of conviction that his three-year prison term for the firearm specification to his aggravated robbery offense would run consecutive to a count that had been dismissed. The record clearly reflects that this was, in fact, a clerical mistake.” Consequently, we sustained one of his assignments of error and remanded the cause for “the limited purpose of issuing a corrected judgment entry.” *State v. Moore*, 1st Dist. Hamilton No. C-120352 (May 3, 2013).

On remand, the trial court held a hearing at which Moore was present. Following the hearing, the court journalized an entry that contained the word “Re-

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Sentence” under the caption. Nevertheless, the sentence in the new entry differed from the sentence in the previous entry in only one respect: it deleted the incorrect language as we had specified in our decision. This appeal followed.

In his sole assignment of error, Moore contends that the trial court erred by resentencing him. He argues that the trial court exceeded the scope of this court’s mandate and had no authority to conduct a resentencing. This assignment of error is not well taken.

We agree that the trial court had no authority to exceed our mandate and to resentence Moore. *See Nolan v. Nolan*, 11 Ohio St.3d 1, 4, 462 N.E.2d 410 (1984); *State v. Truitt*, 197 Ohio App.3d 758, 2012-Ohio-461, 968 N.E.2d 637, ¶ 8 (1st Dist.); *State v. Hill*, 1st Dist. Hamilton No. C-060727, 2007-Ohio-3085, ¶ 6. But the record shows that the trial court did not resentence Moore despite the unfortunate wording of the new judgment entry.

The trial court began the hearing by stating that “this case was sent back * * * for a limited purpose of a curative judgment entry, so the judgment entry was wrong.” The parties briefly discussed why the judgment entry was wrong. The remainder of the hearing involved Moore asserting his right to appeal, both from our decision to the Ohio Supreme Court and from the new judgment entry to this court. The trial court concluded the hearing by stating, “Well, make sure we put the corrected entry on.” The court did not discuss changing the sentence in any other way or refer to any of the sentencing factors a court must consider during sentencing. *See State v. Bohannon*, 1st Dist. Hamilton No. C-130014, 2013-Ohio-5101, ¶ 7; *State v. Alexander*, 1st Dist. Hamilton Nos. C-118028 and C-118029, 2012-Ohio-3349, ¶ 23-24.

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Thus, the trial court did not exceed our mandate and resentence Moore. At best, the court held a hearing that it did not have to hold. In reality, it should have simply issued a nunc pro tunc entry correcting the clerical error. *See State v. Gause*, 182 Ohio App.3d 143, 2009-Ohio-2140, 911 N.E.2d 977, ¶ 2 (1st Dist.); *State v. Hodges*, 1st Dist. Hamilton No. C-990516, 2001 Ohio App. LEXIS 2729, *6-7 (June 22, 2001). Nevertheless, Moore was not prejudiced in any way. We, therefore, overrule his sole assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., FISCHER and MOCK, JJ.

To the clerk:

Enter upon the journal of the court on October 7, 2015
per order of the court _____.
Presiding Judge