

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

|                      |   |                        |
|----------------------|---|------------------------|
| STATE OF OHIO,       | : | APPEAL NO. C-150165    |
|                      | : | TRIAL NO. 14CRB-21816  |
| Plaintiff-Appellee,  | : |                        |
|                      | : | <i>JUDGMENT ENTRY.</i> |
| vs.                  | : |                        |
| JAYDRA MCLENDON,     | : |                        |
|                      | : |                        |
| 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); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Jaydra McLendon was charged with the offense of aggravated menacing, a misdemeanor of the first degree. Following a bench trial, the trial court found McLendon guilty of this offense and continued the matter for sentencing. When the parties returned to court for a sentencing hearing, the trial court informed them that it was amending the charge against McLendon to menacing, a misdemeanor of the fourth degree, so that McLendon would be able to expunge the conviction at a later time. The court then sentenced McLendon to a suspended 30 days' incarceration, ordered McLendon to forfeit two weapons that

had been in her possession, imposed a fine and court costs, and placed her on a five-year period of probation.

McLendon has appealed, raising four assignments of error for our review. We begin with the second assignment of error, as it is dispositive of this appeal. In her second assignment of error, McLendon argues that the trial court erred in the imposition of sentence, because it was without authority to amend her charge to a misdemeanor of the fourth degree. She is correct. The trial court amended the charge against McLendon from a misdemeanor of the first degree to a misdemeanor of the fourth degree so that McLendon could later apply for an expungement. This was in violation of Crim.R. 7(D), which provides that the trial court may amend a complaint to correct a defect, imperfection, or omission, or to conform the charge to the evidence presented. The trial court was also without authority to amend the charge under Crim.R. 33(A), because McLendon had not filed a motion for a new trial. *See Corrigan v. White*, 46 Ohio St.2d 29, 30, 346 N.E.2d 289 (1976).

Consequently, we sustain McLendon's second assignment of error and hold that the trial court erred in amending the charge to a misdemeanor of the fourth degree. We vacate the conviction for a fourth-degree misdemeanor and remand with instructions for the trial court to sentence McLendon for the offense that it had found her guilty of before its improper amendment, aggravated menacing as a misdemeanor of the first degree. McLendon's remaining assignments of error are rendered moot by our disposition of the second assignment of error.

Therefore, the judgment of the trial court is reversed and this cause is remanded for sentencing on the first-degree misdemeanor.

A certified copy of this judgment entry shall constitute 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