

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

STATE OF OHIO,	:	APPEAL NO. C-190356
Plaintiff-Appellee,	:	TRIAL NO. B-0510014
vs.	:	<i>JUDGMENT ENTRY.</i>
LEONARD EVANS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Leonard Evans appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion for Resentencing Based on a Non-Final Appealable Order and Void Judgment Entr[ies].” We reverse the court’s judgment overruling the motion and remand for correction of the March 2016 judgment of conviction.

On April 6, 2006, Evans was convicted of murder, carrying a concealed weapon, and having weapons while under a disability. On April 21, 2006, the trial court entered judgment nunc pro tunc to April 6, to correct the misstatement in the judgment of conviction of the prison term imposed for having weapons while under a disability. This court affirmed those convictions in the direct appeal from the April 6, 2006 judgment of conviction. *State v. Evans*, 1st Dist. Hamilton No. C-060392 (Jan. 23, 2008), *appeals not accepted*, 122 Ohio St.3d 1507, 2009-Ohio-4233, 912 N.E.2d 110.

In March 2016, on remand from this court's decision in *State v. Evans*, 1st Dist. Hamilton No. C-140503, 2015-Ohio-3208, the trial court resentenced Evans and entered a corrected judgment of conviction. Pursuant to that remand, the judgment of conviction excluded the unauthorized period of postrelease control imposed for murder in the April 6, 2006 judgment of conviction, imposed postrelease control for the weapons offenses, and corrected the misstatement in the April 21, 2006 nunc pro tunc entry concerning the sum of the prison terms. The March 2016 judgment stated that it was entered nunc pro tunc to April 21, 2006. This was clearly a mistake, because the judgment was entered after a resentencing hearing and was not correcting a clerical mistake.

Evans appealed the March 2016 judgment of conviction. In May 2016, while that appeal was pending, the trial court entered a second judgment, identical to the March 2016 judgment, but changing the nunc pro tunc date to "04/06/2016 [sic]." It is not clear from the record what prompted the trial court to do that. In 2017, this court affirmed the March 2016 judgment of conviction. *State v. Evans*, 1st Dist. Hamilton No. C-160419, 2017-Ohio-2767.

In the 2019 motion from which this appeal derives, Evans sought resentencing on the ground that the judgment under which he currently stands convicted is void and was not a final appealable order. On appeal from the overruling of that motion, he advances two assignments of error. The assignments of error essentially restate the challenges presented in his motion and thus may fairly be read together to challenge the overruling of the motion. The challenge is well taken in part.

Crim.R. 36 permits "[c]lerical mistakes in judgments" to be "corrected \* \* \* at any time." And a court always has jurisdiction to correct a void judgment. But a judgment is not void if it is entered by a court with personal and subject-matter jurisdiction. *State v.*

*Henderson*, Slip Opinion No. 2020-Ohio-4784, ¶ 40, following *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 4-6 and 41.

The April 6, 2006 judgment of conviction constituted a final appealable order. The sentencing errors in that judgment did not deprive this court of jurisdiction to review the judgment in the direct appeal. *Manns v. Gansheimer*, 117 Ohio St.3d 251, 2008-Ohio-851, 883 N.E.2d 431, ¶ 6 (holding that “sentencing errors are not jurisdictional”). And the judgment was not void, because the trial court, in entering that judgment, acted with personal and subject-matter jurisdiction, because Evans appeared before the court under a valid felony indictment.

The April 21, 2006 entry was properly entered nunc pro tunc to the April 6, 2006 judgment of conviction. Crim.R. 36 authorized its entry to correct the clerical mistake in the April 6 judgment of conviction, misstating the prison term properly imposed at the sentencing hearing for the offense of having weapons while under a disability. *See State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158, 164, 656 N.E.2d 1288 (1995) (noting that a nunc pro tunc entry is proper “to reflect[] what the court actually decided, not what the court might or should have decided”). The April 21 entry did not supersede the April 6 judgment of conviction and was not a final appealable error. *See State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, ¶ 19 (noting that a nunc pro tunc entry does not replace, but relates back to, the original judgment entry).

The March 18, 2016 judgment under which Evans currently stands convicted is not void. The trial court exercised its jurisdiction to correct a void judgment when, pursuant to this court’s remand, it conducted a hearing and resentenced Evans in conformity with the postrelease-control statutes and cases. And the court included in the judgment of conviction a correct statement of the sum of the prison terms. Because the March 2016 judgment of conviction resentenced Evans for his weapons offenses, it

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superseded the April 6, 2006 judgment of conviction and constituted a final appealable error. The mistake in entering the March 2016 judgment of conviction nunc pro tunc did not deprive this court of jurisdiction to review and decide Evans’s appeal from that judgment.

The May 2016 entry is void. The trial court lost jurisdiction in the case after entry of the March 2016 judgment of conviction. And the May 2016 entry was not a proper exercise of the trial court’s authority under Crim.R. 36 when it did not correct, but instead compounded, the mistake in entering the March 2016 judgment of conviction nunc pro tunc.

Evans did not raise the nunc-pro-tunc mistake in his appeal from the March 2016 judgement of conviction. But the mistake remained subject to correction under Crim.R. 36. Evans brought the mistake to the attention of the common pleas court in his 2019 motion for resentencing. The court erred in failing to afford him relief on that basis.

Accordingly, we sustain the assignments of error in part, reverse the judgment overruling the “Motion for Resentencing,” and remand this case with instructions to vacate the May 2016 entry and enter a corrected judgment of conviction, nunc pro tunc to March 18, 2016.

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

**ZAYAS, P.J., MYERS and CROUSE, JJ.**

To the clerk:

Enter upon the journal of the court on February 19, 2021,  
per order of the court \_\_\_\_\_.  
Administrative Judge