

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

STATE OF OHIO,	:	APPEAL NO. C-190448
Plaintiff-Appellee,	:	TRIAL NO. C-19CRB-15127
vs.	:	<i>JUDGMENT ENTRY.</i>
ALEXCIS MCCOY,	:	
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.

Following a bench trial, the trial court convicted Alexcis McCoy of criminal damaging (under R.C. 2909.06) for destroying a storm door and shattering a window at his mother’s house. The incident started when Mr. McCoy stopped by to visit and began making noodles. Apparently upset with his mother, she testified that he spit noodles on her and went outside and leaned against his car; she locked the door and cleaned herself up. After Mr. McCoy’s mother thought he had calmed down, she unlocked the side door so that he could come back inside. Soon, though, she heard a loud noise coming from the kitchen, and discovered that the storm door had been jerked off of its hinges and that the kitchen window had been shattered. Mr. McCoy’s mother testified that he soon appeared at the door and said: “If you wouldn’t have locked the door, I wouldn’t have done it.” He further explained that he had used his boots (which she observed lying on the ground) to break the kitchen window.

In his first assignment of error, Mr. McCoy alleges that the trial court did not give Mr. McCoy proper credit for jail time served. The state concedes the error. On July 24, 2019, the trial court sentenced Mr. McCoy to 90 days in jail, with credit for 20 days. The court initially issued a stay conditioned on an \$8,000 bond (which he did not pay), and Mr. McCoy was concurrently being held on a felony indictment that was subsequently dismissed. On October 8 the court issued a stay pending appeal, but the court only credited Mr. McCoy with an additional 38 days. Because Mr. McCoy did not pay the \$8,000 bond, he was entitled to credit for every day served—even though he was also being held for the indictment. *See* R.C. 2949.08(C)(1). Thus, Mr. McCoy’s sentence had been fully satisfied by the time of the October 8 stay. We therefore sustain this assignment of error.

In his second assignment of error, Mr. McCoy argues that the trial court failed to provide his right to allocution under Crim.R. 32. Because we hold that Mr. McCoy has already satisfied his sentence, we decline to address this assignment of error because it is moot.

In his final assignment of error, Mr. McCoy argues that his conviction was against the manifest weight of the evidence. In reviewing whether the judgment was against the weight of the evidence, we sit as a “thirteenth juror.” *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). In other words, we review the evidence, the credibility of witnesses—the entire record. *Id.* But we will only reverse if the trial court “clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *Id.*, quoting *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist. 1983), paragraph three of the syllabus.

Mr. McCoy argues that his conviction was against the weight of the evidence because: (1) Mr. McCoy's mother did not actually observe him breaking the door or window; (2) she nevertheless let him back into the house; and (3) due to PTSD (because of unrelated events) her memory is not reliable. These objections are not well taken. The trial court was reasonable to believe the mother's testimony that Mr. McCoy had admitted to breaking the door and window. And the trial court was similarly reasonable in giving weight to the highly probative, circumstantial evidence that Mr. McCoy was right outside her house when the damage occurred. Finally, we cannot say that the trial court clearly lost its way in concluding that the mother's PTSD did not undermine the accuracy of her testimony. We therefore conclude that Mr. McCoy's judgment was not against the manifest weight of the evidence and we overrule this assignment of error.

* * *

In light of the forgoing analysis, we affirm Mr. McCoy's first assignment of error and overrule his third assignment of error. His second assignment of error is moot and we decline to address it. We remand this case to the trial court with instructions to give Mr. McCoy full credit for jail-time served.

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.

MOCK, P.J., BERGERON and CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on October 28, 2020,
per order of the court_____.

Presiding Judge