

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

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| STATE OF OHIO, | : | APPEAL NO. C-070247 |
| | : | TRIAL NO. B-0507468 |
| Plaintiff-Appellee, | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
| vs. | : | |
| MALAR BALASUBRAMANIAN, | : | |
| | : | |
| Defendant-Appellant. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant, Malar Balasubramanian, appeals the trial court’s denial of her motion to correct a judgment under Crim.R. 36.

In January 2006, Balasubramanian entered a guilty plea to one count of involuntary manslaughter. The plea agreement stated that “[t]he Defendant does not waive her right to file a Motion for Judicial Release pursuant to Ohio Revised Code Section 2929.20(B)(4). The State acknowledges that the agreed sentence set forth in this plea agreement does not preclude the Defendant from filing a Motion for Judicial Release pursuant to R.C. Section 2929.20(B)(4). However, the State reserves the right to object to the granting of such motion.”

The judgment entry of conviction, though, included the following sentence: “Pursuant to a plea agreement between the parties, the defendant herein is not

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

eligible for intensive prison program, transitional control, judicial release, or any other early release program and is to serve this sentence in its entirety.”

In March 2007, Balasubramanian filed a motion to correct the judgment under Crim.R. 36. Specifically, she asked the court to amend the judgment to reflect her right under the plea agreement to file for judicial release. The trial court denied the motion.

In a single assignment of error, Balasubramanian now argues that the trial court erred in denying her motion to correct the judgment.

Crim.R. 36 provides that “[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time.” A trial court’s decision under Crim.R. 36 will not be reversed unless it is clearly erroneous.²

Here, the trial court acknowledged that the contested language did not reflect the plea agreement and that Balasubramanian had the absolute right to file for judicial release. But the court held that because the clerk of courts had placed the language in the judgment entry of conviction and had addressed the language to the Department of Corrections, the court was not bound by the portion of the entry regarding judicial release and other early-release alternatives.

We hold that the trial court’s denial of the motion was clearly erroneous. The judgment entry of conviction was simply a misstatement of the plea agreement and did not correctly reflect Balasubramanian’s rights. The fact that the clerk of courts had inserted the language was immaterial; in signing the entry, the trial court had adopted the clerk’s error. Accordingly, we sustain the assignment of error.

² See, e.g., *State v. Dearth*, 5th Dist. No. 02 CA 18, 2002-Ohio-7381, at ¶11.

We reverse the judgment of the trial court and remand the cause with instructions to strike from the judgment entry of conviction the sentence concerning the defendant's ineligibility for, among other things, judicial release.

Further, 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.

HILDEBRANDT, P.J., and HENDON, JJ.

PAINTER, J., concurring.

I concur, but write separately to add that this case is one of many where the problem is caused by an unusual practice in Hamilton County common pleas courts: neither the defense lawyer nor the defendant see the sentencing entry when it is issued. That is weird. If the entries were prepared simultaneously with the sentencing and presented to the parties—or at least emailed the next day—these errors could be stopped short of having a later motion or, in this case, an appeal.

And I am unable to understand why the trial court—though acknowledging Balasubramanian's right to file a judicial-release motion—did not simply strike the clerk's boilerplate language.

To the Clerk:

Enter upon the Journal of the Court on January 23, 2008
per order of the Court _____.
Presiding Judge