

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

STATE OF OHIO,	:	APPEAL NO. C-110362
Plaintiff-Appellee,	:	TRIAL NO. B-1003140-A
vs.	:	<i>JUDGMENT ENTRY.</i>
PENISTON BENNETT,	:	
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. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Peniston Bennett appeals his conviction for trafficking in cocaine. We conclude that his assignments of error do not have merit, so we affirm the judgment of the trial court.

Bennett pleaded guilty to trafficking in cocaine, possession of cocaine, and conspiracy. At the sentencing hearing, the trial court merged the possession and conspiracy counts with the trafficking count and imposed a six-year sentence. Despite the trial court's pronouncement of a six-year sentence on the record, the judgment entry stated that Bennett had been sentenced to a six-month term of incarceration. The trial court attempted to correct the error by means of a nunc pro tunc entry, but instead issued a judgment entry that imposed consecutive two-year terms for the three offenses to which Bennett had pleaded guilty. Bennett filed a motion that challenged the nunc pro tunc entry. In his motion, Bennett contended that the three offenses were allied offenses of similar import for which he could not be separately convicted. The trial court conducted a resentencing hearing after

which it imposed the original six-year sentence. Following the resentencing hearing, the judgment entry properly reflected the six-year sentence. Bennett now appeals.

Bennett's first assignment of error is that the trial court did not have jurisdiction to change a valid sentence once the imprisonment had begun. Bennett contends that the trial court should not have changed the six-month sentence that was reflected in the judgment entry. But it is clear from the record that the entry contained a clerical error and that Bennett had been sentenced to six years by the trial court. A six-month sentence was not within the applicable range for the second-degree felony to which Bennett had pleaded guilty. See R.C. 2929.14(A)(2). The trial court was permitted to correct the clerical error by means of a nunc pro tunc entry at any time. Crim.R. 36. The first assignment of error is overruled.

In his second assignment of error, Bennett asserts that the trial court erred in imposing consecutive sentences. But the trial court corrected its mistake when, upon Bennett's motion, it resentenced him and imposed the original six-year term of incarceration. Because the trial court corrected its error, we conclude that there was no prejudice to Bennett. The second assignment of error is overruled.

Therefore, we affirm the trial court's judgment.

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.

HILDEBRANDT, P.J., SUNDERMANN and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on December 14, 2011

per order of the court _____
Presiding Judge