

IN THE SUPREME COURT OF OHIO

State of Ohio, : Case No.: 10-1007
Plaintiff-Appellee, : On Appeal from the Auglaize
vs. : County Court of Appeals,
Stephen M. Lester, : Third Appellate District.
Defendant-Appellant. : C.A. Case No.: 2-10-20

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT STEPHEN M. LESTER

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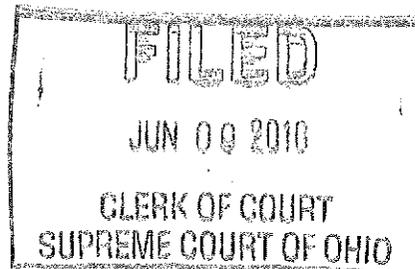


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An appeal from a nunc pro tunc judgment containing a finding of guilt pursuant to Criminal Rule 32(C), is the final, appealable order; therefore, a criminal defendant's appeal following a revised entry is the first direct appeal as of right, violates a Defendant-Appellant's state and federal constitutional rights from an appeal of right after a final judgment to appellate review of the felony convictions. Ohio Constitution, Article 4, Section § 3, Final Judgments, and Ohio Revised Code § 2953.02.

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State v. Lester, Auglaize County Court of Appeals Entry,
May 12, 2010 A-1

**EXPLANATION OF WHY THIS A CASE OF PUBLIC OR GREAT GENERAL
INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.**

This presents a question involving a substantain constitutional question regarding when a Court of Appeals dismisses an appeal from a nunc pro tunc judgment, containing a finding of guilt pursuant to Criminal Rule 32(C).

Appellant submits whether a court of appeals has disregarded the procedures set forth by statute, or the constitutional dicates of due process and equal protection. If it dismisses a nunc pro tunc judgment stating the means of a "final order," pursuant to Criminal Rule 32(C). See State v. Baker, 2008-Ohio-3330; and State ex rel. Culfan v. Medina Cty. Court of Common Pleas, 2008-Ohio-4609.

In this case, the court of appeals excluded this Appellant, and many other appellant's to their constitutional rights to receive appellate review from a "final order," incompilance with Crim.R.32(C). As such, this Appellant, and unfortunately many other Ohio citizens' are being denied due process and equal protection to appellate review of guilt or innocence.

It seemed clear that in Ohio there [was] a statutory and constitutional right to appeal a criminal conviction. See R.C. 2953.02; Ohio Constitution, Article IV, Section § 3; and State v. Lickles (1953), 159 Ohio St. 353, 357, 112 N.E.2d 531, 584. Notwithstanding, an appeal of right is also provided in App.R.4(A).

Consequently, the decision of the court of appeals apparently threatens the structure of an appeal taken from a final order (Crim.R.32(C), created by the General Assembly in R.C. 2953.02; and the Ohio Constitution they took oath to follow upon their duties. By its ruling, the court of appeals undermines legislative intent, ignores the due process clause, and creates its own unsupported view of a final, appealable order that complies with Crim.R.32(C).

Furthermore, the decision of the court of appeals elevates the procedures provided for appellate review, as mandated by this Court, U.S. Supreme Court, state and federal constitution, and General Assembly.

Lastly, the decision of the court of appeals sets a precedent that may/would exclude an entire due process and equal protection issue upon multiple Ohio criminal defendant's being denied an appeal of right, based upon its erroneous application that a nunc pro tunc judgment is not a "final order."

The court of appeals decision is also contrary to the Sixth Appellate District's holding in State v. Lampkin (Feb. 12, 2010, App. No. L-09-1270), Slip Copy 2010 WL 1781496, 2010-Ohio-1971, that a nunc pro tunc judgment is the actual final order, based upon Crim.R.32(C).

In sum, this case puts in issue that essence of an appeal of right, once an actual finding of guilt was presented, and journalized as required by this Court. Baker, supra, and Culgan, supra. Notwithstanding, this case would protect multiple other cases not being dismissed from an appeal of right, if this court accepts jurisdiction. To actually promote the court of appeals decision, would only establish that the dictates by General Assembly, and Ohio Constitution does not even exist!

Therefore, this Appellant respectfully request that this Honorable Court to accept jurisdiction, and protect all Ohio citizens to an appeal of right.

STATEMENT OF THE CASE AND FACTS

Appellant was indicted by the January, 2006, Term of the Auglaize County, Ohio Grand Jury on one count of Robbery in violation of Ohio Revised Code § 2911.02(A)(2), one count of Abduction in violation of Ohio Revised Code § 2905.02(A)(1), one count of Theft in violation of R.C. § 2913.02(A)(1), one count of Attempted Felonious Assault in violation of R.C. § 2923.02(A)/ § 2903.11(A)(1), and one count of Aggravated Menacing in violation of R.C. § 2903.21(A). Appellant pled not guilty to the charges in the indictment. A jury trial commenced and on May 17, 2006, Appellant was found not guilty of Robbery but guilty of the remaining charges in the indictment. On July 10, 2006, Appellant was sentenced to an aggregated term of eight years incarceration.

DIRECT APPEAL:

It shall be noted that the following procedural history is actually a statement of nullities, based upon a void judgment of conviction.

On August 9, 2006, Appellant filed a timely appeal to the Third District Court of Appeals, Auglaize County. The Court affirmed the void judgment in part and reversed in part, based upon an inconsistent notification of post release control. State v. Lester, 3rd Dist.No. 2-06-31, 2007-Ohio-4239; appeal not accepted for review. State v. Lester, 117 Ohio St.3d 1500, 2008-Ohio-2028.

PETITION TO VACATE:

It shall be noted that the following history is actually a statement of nullities, based upon a void judgment of conviction.

On March 20, 2007, Appellant filed a petition to vacate or set aside the judgment of conviction or sentence. On May 22, 2007, the trial court denied the petition in a summary opinion as being untimely filed. On October 22, 2007, that judgment was later affirmed on appeal. State v. Lester, 3rd Dist.No. 2-07-23,

2007-Ohio-5627; appeal not accepted for review State v. Lester, 117 Ohio St.3d 1439, 2008-Ohio-1279.

RE-SENTENCING:

On September 10, 2007, the trial court re-sentenced Appellant, pursuant to the court of appeals' remand, to eight years incarceration and a (corrected) mandatory three years of post release control. Appellant's total sentence was thus 8 years.

DIRECT APPEAL:

It shall be noted that the following direct appeal is actually a statement of nullities, based upon a void judgment of conviction.

On October 10, 2007, Appellant filed a timely appeal to the Third District Court of Appeals, Augliaze County, Ohio. The Court of Appeals affirmed that judgment on appeal. State v. Lester, 3rd Dist.No. 2-07-34, 2008-Ohio-1148; appeal not accepted for review State v. Lester, 119 Ohio St.3d 1413, 2008-Ohio-3880.

PETITION TO VACATE OR SET ASIDE JUDGMENT:

It shall be noted that the following history is actually a statement of nullities, based upon a void judgment of conviction.

On April 1, 2008, Appellant filed a petition to vacate or set aside judgment of conviction and sentence, challenging his conviction and his sentence in the trial court. This post-conviction was denied by the trial court. On December 2, 2008, Appellant filed a timely appeal. On May 11, 2009, the Court of Appeals issued a judgment affirmed the trial courts judgment. State v. Lester, 3rd Dist. No. 2-08-24, unreported, appeal not accepted for review State v. Lester, 122 Ohio St.3d 1524, 2009-Ohio-4776.

Consequently, thereafter, on April 5, 2010, the trial court filed a Nunc Pro Tunc Judgment on resentencing which corrected the prior judgment by adding a line of text to reflect that the convictions were pursuant to a verdict at jury trial. The purpose was to substantially "amend" the resentencing judgment to reflect that Appellant was convicted at jury trial. See State v. Baker, 2008-Ohio-3330, requiring that sentencing judgment included the "means of conviction" as to be a final, appealable order.

DIRECT APPEAL:

On May 3, 2010, Appellant filed a timely appeal. Unfortunately, on May 12, 2010, the Third District Court of Appeals, decided that the nunc pro tunc judgment was not a "final order," and dismissed the appeal for the lack of jurisdiction. See Judgment Entry: Appendix A-1).

Appellant files this instant appeal and memorandum in support of jurisdiction to this honorable court.

FIRST PROPOSITION OF LAW:

An appeal from a nunc pro tunc judgment containing a finding of guilt pursuant to Criminal Rule 32(C), is the final, appealable order; therefore, a criminal defendant's appeal following a revised entry is the first direct appeal as of right from a valid conviction and sentence. Denial of such right, violates a Defendant-Appellant's state and federal constitutional rights from an appeal of right after a final judgment to appellate review of the felony convictions. Ohio Constitution, Article 4, Section § 3, Final Judgments, and Ohio Revised Code § 2953.02.

Defendant-Appellant's constitutional rights to an appeal as of right, to review the felony convictions has been denied by the Third Appellate District. This denial was based on an appeal from the trial court's nunc pro tunc judgment, entered on April 5, 2010, by stating the means of conviction; as the September 10, 2007 entry failed to comply with Crim.R.32(C), as means of final appealable order. Unfortunately, after an appeal was filed (May 3, 2010), the court of appeals came sua sponta dismissing the appeal from the nunc pro tunc judgment not being a "final order" subject for appeal, for the lack of subject matter jurisdiction. (See Judgment Entry: Appendix pg. 3).

The reason for this dismissal was based on the trial court's nunc pro tunc judgment, as it only sole purpose was to retrospectively corecting a clerical omission in the prior sentencing entry (Sept. 10, 2007) to comply with Crim.R.32(C). As no new or substantial right was affect under R.C. 2505.02(A)(1) by the correction of the sentencing entry to reflect what actually occurred and what clearly was evident throughout the record and, especially, to Appellant. (See Judgment Entry: Appendix pg. 3).

This apparent theory from the court of appeals that the nunc pro tunc judgment corrected a clerical omission from the prior entry, is actually an attempt to "amend" the September 10, 2007 entry, by changing a substantial finding, and

went far beyond the scope of correcting a clerical error. Consequently, other appellate court's have taken different positions, that a nunc pro tunc entry that complies with Crim.R.32(C) is the final, appealable order. However, other's appellate court's have went further, and considered that a nunc pro tunc judgment order was improper and was void, if it went far beyond a clerical mistake.

This Court in State v. Baker, 2008-Ohio-3330, at syllabus, held that Criminal Rule 32(C) requires that a judgment of conviction must set forth the following to be a final appealable order: "(1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court." See also, State ex rel. Gulgan v. Medina Cty. Court of Common Pleas, 2008-Ohio-4609, at ¶10.

In State ex rel. Gulgan v. Medina Cty. Court of Common Pleas, this Court ruled that a judgment of conviction which stated the defendant "has been convicted" was not a final appealable order and did not comply with either Crim.R.32(C) or Baker because the judgment did not contain a guilty plea, a jury verdict, or the finding of the court upon which the defendant's conviction were based." Id. at ¶ 2 & 10.

In this instant case, when the trial court came sua sponte on April 5, 2010 with a nunc pro tunc judgment, by acknowledging that it used the phrase "has been convicted" instead of "pursuant to a guilty jury verdict," as the manner of conviction in the original judgment (entered on September 10, 2007); it thus nevertheless established that the original judgment was not a final order, and the nunc pro tunc judgment was attempting to comply with Crim.R.32(C), by means of a final appealable order.

FIRST APPEAL OF RIGHT FROM AN APPEAL OF A FINAL JUDGMENT OF CONVICTION:

The right to appeal a state criminal conviction is not specifically provided for in the Federal Constitution. Estelle v. Dorrrough (1975), 420 U.S. 534, 536.

However, where a state provides a process of appellate review, the procedures used must comply with constitutional dictates of due process and equal protection. Griffin v. Illinois (1956), 351 U.S. 12, 18. When a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution -- and, in particular, in accord with the Due Process Clause. Evitts v. Lucey (1985), 469 U.S. 387, 393.

While Griffin held that due process does not require a state to afford appellate review, the Court noted that "all of the States now provide some method of appeal from criminal convictions, recognizing the importance of appellate review to correct adjudication of guilt or innocence." Griffin, 351 U.S. at 18. Subsequently Supreme Court decisions have reinforced the importance of appellate review in legitimizing state trial court convictions. See Ohio Adult Parole Board Authority v. Woodard (1998), 523 U.S. 272, 278; Halbert v. Michigan (2005), __ U.S. __, 125 S.Ct. 2582, 2597.

In Ohio there is both a statutory and constitutional right to appeal a criminal conviction. See R.C. 2953.02; Ohio Constitution, Article 4, Section § 3; and see State v. Lickles (1953), 159 Ohio St. 353, 357, 112 N.E.2d 531, 534. An appeal of right is also provided by rule. See App.R.4(A). Because an appeal is an integral part of Ohio's system for adjudicating guilt or innocence, its procedures for review must not violate a defendant's Federal due process rights. See Evitts, 469 U.S. at 393.

It is quite clear that the September 10, 2007 original judgment of conviction was not a final appealable order; as such the trial court came sua sponta with a nunc pro tunc judgment on April 5, 2010. Consequently, "[t]he purported judgment (Sept. 10, 2007) did not comply with Crim.R.32(C) and * * * did not constitute a final appealable order." State ex rel. Culgan v. Medina Cty Court of Common Pleas, supra, at ¶ 1. As such, without a final appealable order,

the Third Appellate District was without jurisdiction to hear an appeal in case numbers 2-06-31 and 2-07-34. See State v. Auto Mut. Ins. Co. Titanium Metals Corp., 119 Ohio St.3d 540, 2006-Ohio-1713, at ¶ 8. It thus would follow that when the trial court came sua sponta with a nunc pro tunc judgment on the 4th of April, 2010, by means of the conviction pursuant to Crim.R.32(C), it was the final appealable order. Nonetheless, the court of appeals did not have jurisdiction from the void September 10, 2007 entry, until a manner conviction was in compliant with Baker, and appeal taken therefrom. As such, once the trial court created the final appealable order adding the manner of conviction, this Appellant surely has a right to appeal the Court's ruling as to the manner of conviction and anything associated with the manner of conviction.

NUNC PRO TUNC JUDGMENT THAT COMPLIES WITH CRIM.R.32(C) IS THE FINAL APPEALABLE ORDER:

This court has concluded that a defendant is entitled to a new sentencing entry irrespective of prior appellate review, because the original sentencing entry did not constitute a final appealable order. State ex rel. Culgan v. Medina Cty. Court of Common Pleas, supra, at ¶ 10-11.

After the remand by this Court from Culgan, the Medina County Court of Common Pleas issued a nunc pro tunc judgment entry in order to comply with this Court's mandate. Culgan then appealed that nunc pro tunc entry to the Ninth District, in State v. Culgan (June 15, 2009), Medina County App. No. 08CA0080-M, 2009-Ohio-2783. In that decision, Mr. Culgan won his appeal, as the judgment was vacated and the matter remanded for resentencing. Notably, the basis was in the Foster decision, which came out in 2006, five years after Culgan's indictment and three years after this Court had issued its first decision on the first "appeal." Hence, Foster was deemed applicable to Culgan's case because his case was on direct appeal, such that there was no retroactive problem. This, of course, makes sense, as the lack of a final appealable order means that the case was neither final nor appealable until the nunc pro tunc entry issued.

This Court has further provided in McAllister v. Smith that a habeas corpus would not lie, because a trial court had failed to make a finding of guilt, as to violating Crim.R.32(C). As the proper remedy is a trial court to re-sentence, or issue a nunc pro tunc sentencing entry containing a finding of guilt, and the proper action is in an appeal from that revised entry. Id. at 7 & 9, 2008-Ohio-3881.

According to other Ohio appellate district courts, a nunc pro tunc judgment that explains the manner of conviction, is the final appealable order; as a court of appeals now retains jurisdiction of the properly filed appeal. See State v. Bonaminio (Ohio App. 6 Dist.), 2010-Ohio-934, at ¶ 1 (The trial court later entered a nunc pro tunc judgment entry on May 27, 2009, in order to comply with Crim.R.32(C), Baker, Culgan); State v. O'Neal (Ohio App. Ninth Dist.), 2010-Ohio-1253, at ¶ 1 (The trial court entered a "Nunc Pro Tunc Entry," Mr. O'Neal appealed from the nunc pro tunc entry, and this court determined that this appeal was "now properly before this court." State v. O'Neal, 9th Dist. No. 07CA0050-M, 2008-Ohio-1325, at ¶ 4); State v. Gilliam (Ohio App. 7 Dist), 2009-Ohio-5914, at ¶ 8 (A nunc pro tunc entry was filed on August 31, 2009. The new judgment entry explains the manner of conviction and is now a final appealable order); and Roth v. Roth (Sixth Dist.), 585 N.E.2d 482, at 4 (The July 29, 1988 order is a nunc pro tunc, in part, it was the final order in the case, and appellant properly filed a notice of appeal within thirty days of the nunc pro tunc order. Consequently, appellant's appeal and appellee's cross-appeal were timely filed).

Notwithstanding, the current conflict between the Third Appellate District and Sixth Appellate District, is a distinction from this case and State v. Lampkin (Feb. 12, 2010, App. No. L-09-1270), Slip Copy 2010 WL 1781496, 2010-Ohio-1971. The Sixth District had concluded that a nunc pro tunc entry that now complies with Crim.R.32(C) constitutes a final appealable order, and they were without jurisdiction

to hear Mr. Lampkin's original appeal that lacked a final order. Nonetheless, when the Third District had dismissed this Appellant's appeal of right because of the nunc pro tunc entry entered on April 5, 2010; it thus, was in conflict with the Sixth District Court of Appeals decision in State v. Lampkin, supra.

It is quite apparent the Third District has denied this Appellant, and multiple other appellant's to an appeal of right from a nunc pro tunc judgment; correcting a void sentencing entry that did not constitute a final appealable order pursuant to Crim.R.32(C). See State v. Hall (Jan. 8, 2009), 3rd Dist. No. 12-08-09, unreported Judgment, dismissing appeal from Nunc Pro Tunc Judgment correcting omission in 2004 Sentencing Judgment; State v. Lyles (Aug. 13, 2009), 3rd Dist. No. 1-09-40, unreported Judgment, dismissing appeal from Nunc Pro Tunc Judgment correcting omission in 1999 Sentencing Judgment, discretionary appeal denied State v. Lyles, 123 Ohio St.3d 1523, 2009-Ohio-6487; State v. Bruggeman, (April 28, 2010), 3rd Dist. No. 2-10-17; and State v. Lester, (May 12, 2010), 3rd Dist. No. 2-10-20, unreported Judgment, dismissing appeal from Nunc Pro Tunc Judgment correcting omission in 2007 Sentencing Judgment.

Nevertheless, this Appellant was guaranteed to be allowed to prosecute further method of appeal from the manner of conviction, but was denied such rights. However, in light of the myriad of cases decided under the Sixth and Fourteenth Amendments to the United States Constitution and Section 10, Article I of the Ohio Constitution; this Appellant must be provided to such right to an appeal of right, by means of an appeal of the manner of conviction. See Griffin v. Illinois (1956), 351 U.S. 12; Douglas v. California (1961), 372 U.S. 353; Anders v. California (1967), 386 U.S. 738; Evitts v. Lucey (1985), 469 U.S. 387; Penson v. Ohio (1988), 488 U.S. 75; State ex rel. Copeland v. Judges of Third District Court of Appeals (1981), 67 Ohio St.2d 1; State v. Catlino (1967), 10 Ohio St.2d 183; State v. Sims (1971), 27 Ohio St.2d 79; and State v. Retliff (1969), 20 Ohio App.2d 20.

CONCLUSION

For all the above reasons, Appellant Stephen M. Lester respectfully request this Court to accept jurisdiction, as this case involves a felony, is public or great interest, and raises a substantial constitutional question.

Respectfully submitted,



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DEFENDANT-APPELLANT, PRO SE

PROOF OF SERVICE

I attest I sent the Augliaze County Prosecutor a copy of this MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT STEPHEN M. LESTER, by regular U.S. Mail, on this 2nd day of June, 2010, by sending it to 201 S. Willipie Street, Wapakoneta, Ohio, 45895-1992.

Respectfully submitted,



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DEFENDANT-APPELLANT, PRO SE

IN THE SUPREME COURT OF OHIO

State of Ohio, : Case No.: _____
Plaintiff-Appellee, : On Appeal from the Auglaize
vs. : County Court of Appeals,
Stephen M. Lester, : Third Appellate District.
Defendant-Appellant. : C.A. Case No.: 2-10-20
_____ /

APPENDIX TO

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT STEPHEN M. LESTER

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
AUGLAIZE COUNTY

STATE OF OHIO,

CASE NO. 2-10-20

PLAINTIFF-APPELLEE,

v.

STEPHEN M. LESTER,

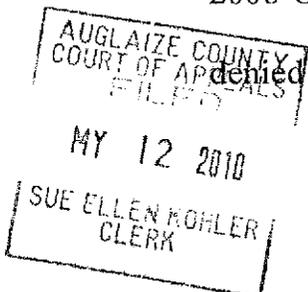
J U D G M E N T
E N T R Y

DEFENDANT-APPELLANT.

This cause comes before the Court *sua sponte* for determination as to whether the appeal should be dismissed for want of jurisdiction.

The record reflects that a jury returned guilty verdicts in May 2006 to multiple felonies and one misdemeanor and, in July 2006, the trial court issued a judgment imposing sentence. Appellant filed an appeal and the judgment of the trial court was affirmed in part and reversed in part, based on an inconsistent notification of post release control. *State v. Lester*, 3rd Dist.No. 2-06-31, 2007-Ohio-4239; appeal not accepted for review *State v. Lester*, 117 Ohio St.3d 1500, 2008-Ohio-2028. Appellant filed a motion for post-conviction relief which was

denied by the trial court, and that judgment was affirmed on appeal. *State v.*



Case No. 2-10-20

Lester, 3rd Dist.No. 2-07-23, 2007-Ohio-5627; appeal not accepted for review
State v. Lester, 117 Ohio St.3d 1439, 2008-Ohio-1279.

Appellant was then resentenced by the trial court, and that judgment was affirmed on appeal. *State v. Lester*, 3rd Dist.No. 2-07-34, 2008-Ohio-1148; appeal not accepted for review *State v. Lester*, 119 Ohio St.3d 1413, 2008-Ohio-3880. Appellant filed a second motion for post-conviction relief which was denied by the trial court, and that judgment was also affirmed on appeal. *State v. Lester* (May 11, 2009), 3rd Dist.No. 2-08-24, unreported, appeal not accepted for review *State v. Lester*, 122 Ohio St.3d 1524, 2009-Ohio-4776.

Thereafter, on April 5, 2010, the trial court filed a *Nunc Pro Tunc* Judgment on resentencing which corrected the prior judgment by adding a line of text to reflect the fact that the convictions were pursuant to a verdict at jury trial. Although not stated as such, the purpose was apparently to correct a clerical omission in the resentencing judgment to reflect that Appellant was convicted at jury trial. See *State v. Baker*, 119 Ohio St.3d 197, 2008 Ohio-3330, requiring that sentencing judgments include the “means of conviction.” Appellant filed the instant appeal on May 3, 2010.

It is well settled that A *nunc pro tunc* judgment applies retrospectively to the judgment which it corrects. A *nunc pro tunc* judgment is not properly subject to appeal and does not act to extend the time in which a party can appeal the actual

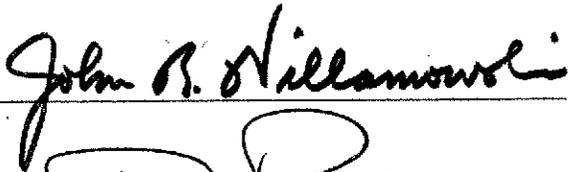
judgment of sentence. *Gold Touch, Inc. v. TJS Lab, Inc.* (1998), 138 Ohio App.3d 106; *Roth v. Roth* (1989), 65 Ohio App.3d 768; *Kuehn v. Kuehn* (1988), 55 Ohio App.3d 245.

In the instant case, the court finds that the trial court issued a *Nunc Pro Tunc* Judgment for the sole purpose of retrospectively correcting a clerical omission in the prior sentencing judgment to comply with Crim.R. 32. No new or substantial right was affected under R.C. 2505.02(A)(1) by correction of the sentencing judgment to reflect what actually occurred and what clearly was evident throughout the record and, especially, to Appellant. Appellant exhausted the appellate process when the resentencing judgment was reviewed and affirmed on appeal, and the Ohio Supreme Court declined to accept it on further appeal. See, also, *State v. Hall* (Jan. 8, 2009), 3rd Dis.No. 12-08-09, unreported Judgment, dismissing appeal from *Nunc Pro Tunc* Judgment correcting omission in 2004 Sentencing Judgment; *State v. Lyles* (Aug. 13, 2009), 3rd Dist.No. 1-09-40, unreported Judgment, dismissing appeal from *Nunc Pro Tunc* Judgment correcting omission in 1999 Sentencing Judgment, discretionary appeal denied *State v. Lyles*, 123 Ohio St.3d 1523, 2009-Ohio-6487.

Accordingly, we find that the trial court's April 5, 2010 *Nunc Pro Tunc* Judgment is not a "final order" subject to appeal, and the instant appeal must be dismissed for lack of jurisdiction.

Case No. 2-10-20

It is therefore **ORDERED, ADJUDGED** and **DECREED** that the appeal be, and the same hereby is, **DISMISSED** at the costs of the Appellant for which judgment is hereby rendered and that the cause be, and the same hereby is, remanded to the trial court for execution of the judgment for costs.







JUDGES

DATED: May 12, 2010
/jnc