

ORIGINAL

IN THE SUPREME COURT OF OHIO

10-2181

The State of Ohio,

Case No.

Appellee,

On discretionary appeal for the Court of
of Appeals for Auglaize County, Ohio,
Third Appellate District.

v.

Appeal Case No. 2-17-10

Christopher R. Bruggeman,

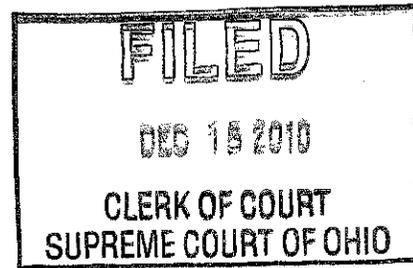
Decided & Journalized: April 28th, 2010.

Appellant.

NOTICE OF APPEAL OF APPELLANT CHRISTOPHER R. BRUGGEMAN

Christopher R. Bruggeman #A 286-466
Oakwood Correctional Facility
3200 North West Street
Lima, Ohio 45801

Counsel for Appellant, *pro se*.



The Auglaize County, Ohio
Prosecuting Attorney's Office
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Counsel for Appellee.

Notice of Appeal of Appellant Christopher R. Bruggeman

Appellant Christopher R. Bruggeman, hereby gives notice of his discretionary appeal, pursuant to Rule II § 1(A)(3), and, Rule II § 2(A)(4)(a) of the Supreme Court Rules of Practice of the Supreme Court of Ohio, from the **Judgment Entry** of the Court of Appeals for Auglaize County, Ohio, Third Appellate District, decided and journalized on April 28th, 2010, in Appeal Case No. 2-17-10. A true copy of said Judgment Entry being appealed is affixed hereafter, and, incorporated forthwith for reference.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully Submitted,


Christopher R. Bruggeman #A 286-466
Oakwood Correctional Facility
3200 North West Street
Lima, Ohio 45801

Appellant, *pro se*.

Proof of Service

A foregoing copy of this notice of appeal has been remitted, forthwith to the Office of Counsel for the Appellee. Being sent via U.S. Mail on this 30th day of December, 2010.


Christopher R. Bruggeman,

Appellant, *pro se*.

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

STATE OF OHIO,

CASE NO. 2-10-17

PLAINTIFF-APPELLEE,

v.

CHRISTOPHER R. BRUGGEMAN,

JUDGMENT
ENTRY

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 November 1993 to three counts of gross sexual imposition and, in December 1993, the trial court issued a judgment imposing sentence. Appellant's convictions and sentences were then affirmed on appeal. *State v. Bruggeman* (Nov. 8, 1994), 3rd Dist.No. 2-94-1, unreported. Thereafter, Appellant filed numerous unsuccessful post-conviction petitions, appeals and original actions. See *State v. Bruggeman*, 3rd Dist.No. 2-04-26, 2005-Ohio-956, appeal not accepted for review *State v. Bruggeman*, 106 Ohio

AUGLAIZE COUNTY
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SUE ELLEN KOHLER
CLERK

On March 19, 2010, apparently on its own motion, the trial court caused a *Nunc Pro Tunc* Judgment of Sentence to be filed which corrected the original sentencing entry by adding a paragraph which reflects 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 December 1993 judgment of sentence 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 April 15, 2010.

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.

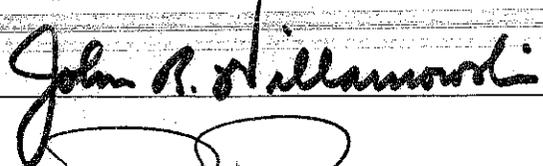
In the instant case, the court finds that the trial court issued a *Nunc Pro Tunc* Judgment for the sole purpose of retrospectively correcting a clerical omission in the prior sentencing judgment to comply with Crim.R. 32. No new or substantial right was affected under R.C. 2505.02(A)(1) by correction of the sentencing judgment to reflect what actually occurred and what clearly was evident throughout the record and to Appellant. Appellant exhausted the appellate process when the judgment of sentence was reviewed and affirmed on appeal.

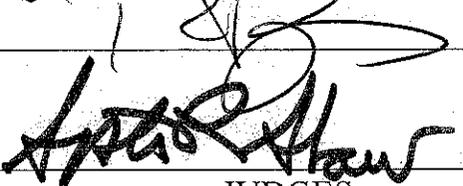
Case No. 2-10-17

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 March 19, 2010 *Nunc Pro Tunc* Judgment is not a "final order" subject to appeal, and the instant appeal must be dismissed for lack of jurisdiction.

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: April 28, 2010
/jnc