

**COURT OF APPEALS OF OHIO, SEVENTH APPELLATE DISTRICT,
MAHONING COUNTY**

State v. Dirocco

2022-Ohio-3221 (Ohio Ct. App. 2022) · No. 21 MA 0116; 21 MA 0117 · Decided September 7, 2022

SUMMARY

The Seventh District Court of Appeals of Ohio considered Jason Dirocco's challenge to sentencing-entry language concerning eligibility for an earned reduction of his minimum prison term and a prior-conviction specification. The court held that he was eligible for the reduction under R.C. 2967.271(F)(1), vacated the sentencing entry in case 21 CR 155, and remanded for a nunc pro tunc entry removing the erroneous language. The appeal relating to case 21 CR 460 was dismissed as moot.

CASE DETAILS

COURT	Court of Appeals of Ohio, Seventh Appellate District, Mahoning County
WRITING FOR THE COURT	David A. D’Apolito; Cheryl L. Waite; Carol Ann Robb
JURISDICTION	Ohio
DECIDED	September 7, 2022
DOCKET	21 MA 0116; 21 MA 0117
DISPOSITION	vacated
PROCEDURAL POSTURE	Consolidated criminal appeals from sentencing entries in which the defendant challenged language stating that he was ineligible for an earned reduction of his minimum prison term and language referring to a prior-conviction specification.
STANDARD OF REVIEW	Under R.C. 2953.08(D)(1), an agreed sentence is not reviewable if it is authorized by law, jointly recommended by the defendant and prosecution, and imposed by the sentencing court. A sentence is authorized by law only if it complies with all applicable mandatory sentencing provisions.
PRECEDENTIAL VALUE	Published intermediate appellate opinion; precedential under Ohio law unless otherwise limited.
PARTIES	Jason Dirocco v. State of Ohio

TOPICS

sentencing

criminal procedure

appellate procedure

statutory interpretation

mootness

PRACTICE AREAS

criminal law

criminal sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by stating in the sentencing entry that Dirocco was ineligible for an earned reduction of his minimum prison term under R.C. 2967.271(F)(1).
2. Whether the sentencing entry improperly included language concerning a notice of prior conviction specification when no such notice was associated with the burglary charge.
3. Whether the appeal concerning case 21 CR 460 was moot because the challenged language appeared only in the sentencing entry for case 21 CR 155.

HOLDINGS

1. Dirocco was eligible for a reduction of his minimum prison term for exceptional conduct or adjustment to incarceration under R.C. 2967.271(F)(1), because he was serving a non-life indefinite prison term and was not serving a term for a sexually oriented offense.
2. The sentencing entry in case 21 CR 155 had to be corrected to remove the language stating that the burglary charge included a notice of prior conviction specification because no such notice was associated with the charge.
3. The sentencing judgment entry is the effective instrument for sentencing a defendant, and the court speaks through its journal entries.

KEY QUOTATIONS

“A court of record speaks only through its journal entries.” (¶ 9)

“Accordingly, the sentencing entry in 21 CR 155 (21 MA 117) is vacated, and this matter is remanded to the trial court to issue a nunc pro tunc order” (¶ 10)

FACTUAL BACKGROUND

Dirocco received an agreed indefinite sentence of four to six years for burglary and concurrent sentences for grand theft and identity fraud in case 21 CR 155. In case 21 CR 460, he received agreed concurrent twelve-month sentences for breaking and entering, possessing criminal tools, vandalism, and theft, to run concurrently with the sentences in case 21 CR 155. The sentencing entry in case 21 CR 155 stated that he was ineligible for an earned reduction of his minimum term and included a notice of prior conviction specification, although no such prior conviction had been mentioned at sentencing or associated with the burglary charge.

PROCEDURAL HISTORY

Dirocco received agreed concurrent sentences in two Mahoning County criminal cases following a consolidated sentencing hearing. He appealed the sentencing entries. The State conceded that Dirocco was eligible for an

earned reduction of his minimum term under R.C. 2967.271(F)(1) and that no notice of prior conviction was associated with the burglary charge. The appellate court vacated and remanded the sentencing entry in case 21 CR 155, corresponding to appellate case 21 MA 0117, and dismissed the appeal concerning case 21 CR 460, corresponding to appellate case 21 MA 0116, as moot.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The trial court must issue a nunc pro tunc order in case 21 CR 155 removing the phrase “with a Notice of Prior Conviction Specification, R.C. 2929.13(F)(6)” from the fourth paragraph of the sentencing entry and removing the entire fourteenth paragraph stating that Dirocco was ineligible for an earned reduction of his minimum term. The appeal concerning case 21 CR 460 is dismissed as moot.

CASES CITED

- State v. Douglas, 7th Dist. Belmont No. 17 BE 0052, 2018-Ohio-5389, ¶ 17
- State v. Sergeant, 148 Ohio St.3d 94, 2016-Ohio-2696, 69 N.E.3d 627, ¶ 29
- State v. Rodriguez-Baron, 7th Dist. Mahoning No. 10-MA-176, 2012-Ohio-1473, ¶ 13
- Gaskins v. Shiplevy, 76 Ohio St.3d 380, 382, 667 N.E.2d 1194 (1996)