

COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY

State v. Stewart

2022-Ohio-1312 (Ohio Ct. App. 2022) · No. 110547 · Decided April 21, 2022

SUMMARY

The Eighth District Court of Appeals affirmed the issuance of a nunc pro tunc sentencing entry correcting the phrasing of Larry Stewart’s aggravated-murder sentence to reflect life imprisonment with parole eligibility after serving 30 full years. The court held that Stewart invited the alleged error by requesting the correction, and that the amended entry accurately reflected the sentence orally imposed and required by R.C. 2929.03(D)(2)(a).

CASE DETAILS

COURT	Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County
WRITING FOR THE COURT	Emanuella D. Groves; Michelle J. Sheehan; Mary J. Boyle
JURISDICTION	Ohio
DECIDED	April 21, 2022
DOCKET	110547
DISPOSITION	affirmed
PROCEDURAL POSTURE	Larry Stewart appealed from the issuance of a nunc pro tunc sentencing entry that corrected the wording of his aggravated-murder sentence.
STANDARD OF REVIEW	The court reviewed the legal authorization for the nunc pro tunc entry and the asserted sentencing and Crim.R. 43 errors for reversible error, applying the invited-error and harmless-error doctrines.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Larry Stewart v. State of Ohio

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- harmless error
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Stewart could obtain appellate relief from a nunc pro tunc sentencing entry that imposed the sentence he had requested.
2. Whether the trial court was authorized to correct the sentencing entry to state life imprisonment with parole eligibility after serving 30 full years under R.C. 2929.03(D)(2)(a).
3. Whether issuing the nunc pro tunc entry outside Stewart's presence violated Crim.R. 43 and required reversal.

HOLDINGS

1. A litigant may not obtain reversal based on an error that the litigant invited or induced; because Stewart expressly requested the nunc pro tunc entry and received the relief he sought, any asserted error in using that mechanism was invited and did not constitute reversible error.
2. The trial court's nunc pro tunc entry was authorized by law because it stated the legally correct sentence of life imprisonment with parole eligibility after serving 30 full years under R.C. 2929.03(D)(2)(a), and it accurately reflected the sentence orally announced at the 1997 sentencing hearing.
3. Any error arising from Stewart's absence when the nunc pro tunc entry was issued was harmless because the resulting sentence was legally correct and Stewart suffered no prejudice.

KEY QUOTATIONS

“At the least, Stewart invited the error upon which his arguments are based by requesting that the trial court issue a nunc pro tunc entry to reflect the correct sentence under R.C. 2929.03(D)(2).”

“Moreover, and as already alluded to, the trial court’s imposition of the “life imprisonment with parole eligibility after serving 30 full years of imprisonment” sentence upon the aggravated murder count is legally correct, parroting the legislature’s phrasing from R.C. 2929.03(D)(2)(a)”

“Any other errors under Crim.R. 43 in the process of reaching this correct result, would therefore, be harmless.”

FACTUAL BACKGROUND

Stewart was convicted after a home-invasion robbery that resulted in one victim's murder and another victim's shooting, along with other offenses and specifications. In 1997, he was sentenced on the aggravated-murder count to '30-years to life.' The sentencing court later issued a nunc pro tunc entry, at Stewart's request, stating that he was sentenced to life imprisonment with parole eligibility after serving 30 full years, which matched the sentence orally announced and the language required by the applicable statute.

PROCEDURAL HISTORY

Stewart was convicted and sentenced in 1997. After multiple postconviction motions and appeals, he challenged the legality of his sentence, and the Ohio Supreme Court affirmed the denial of his mandamus action. Following

a subsequent appeal, the trial court issued a nunc pro tunc entry at Stewart's express request, changing the sentence from '30-years to life' to 'life imprisonment with parole eligibility after serving 30-full years of imprisonment.' Stewart appealed that entry, but the Eighth District affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Stewart, 8th Dist. Cuyahoga No. 73255, 1998 Ohio App. LEXIS 5462 (Nov. 19, 1998)
- State v. Stewart, 8th Dist. Cuyahoga No. 109498, 2020-Ohio-6743
- State ex rel. Stewart v. Russo, 145 Ohio St.3d 382, 2016-Ohio-421, 49 N.E.3d 1272
- State v. Henderson, 161 Ohio St.3d 285, 2020-Ohio-4784, 162 N.E.3d 776
- State v. Harper, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248
- State v. Qualls, 131 Ohio St.3d 499, 2012-Ohio-1111, 967 N.E.2d 718
- State v. Sandidge, 8th Dist. Cuyahoga No. 109277, 2020-Ohio-1629
- State ex rel. Newell v. Cuyahoga Cty. Court of Common Pleas, 165 Ohio St.3d 341, 2021-Ohio-3662, 179 N.E.3d 84
- State ex rel. Davis v. Janas, 160 Ohio St.3d 187, 2020-Ohio-1462, 155 N.E.3d 822
- State v. Grate, 164 Ohio St.3d 9, 2020-Ohio-5584, 172 N.E.3d 8
- Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co., Lincoln-Mercury Div., 28 Ohio St.3d 20, 502 N.E.2d 590 (1986)
- State v. Ford, 158 Ohio St.3d 139, 2019-Ohio-4539, 140 N.E.3d 616
- State v. Campbell, 90 Ohio St.3d 320, 324, 738 N.E.2d 1178 (2000)
- State v. Williams, 6 Ohio St.3d 281, 287, 452 N.E.2d 1323 (1983)