

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

SEPTEMBER 1995 SESSION

**FILED**

November 15, 1995

Cecil Crowson, Jr.  
Appellate Court Clerk

STATE OF TENNESSEE )

Appellee )

V. )

JACK LEE THOMAS, JR. )

Appellant )

C.C.A. NO. 03C01-9504-CR-00109

BLOUNT COUNTY

HON. D. KELLY THOMAS, JR.,  
JUDGE

(driving under influence of  
intoxicant; violation of Habitual  
Motor Vehicle Offender Act)

FOR THE APPELLANT

FOR THE APPELLEE

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OPINION FILED: \_\_\_\_\_

REVERSED AND REMANDED

JOHN K. BYERS  
SENIOR JUDGE

OPINION

The defendant was convicted on a charge of driving under the influence of an intoxicant, fifth offense, on his plea of guilty in the Criminal Court of Blount County in case no. C-7892. He was also convicted on a plea of guilty of violation of the Habitual Motor Vehicle Offender Act in case no. C-7893. These pleas were entered on February 1, 1994.

On July 6, 1994, judgment was entered, and the defendant was sentenced to serve 11 months and 29 days in the county jail on the D.U.I. offense. The defendant was sentenced to serve two years for violation of the Habitual Motor Vehicle Offender Act.

The D.U.I. sentence was ordered to be served concurrently with the sentence in the Habitual Motor Vehicle Offender Act violation. The Habitual Motor Vehicle Act violation sentence was ordered to be served consecutively to a sentence in case no. 59012 in Knox County.

On November 22, 1994, the trial court, acting on a motion by the defendant for work release and on a motion by the State to amend the judgment entered in cases no. C-7892 and no. C-7893, amended both judgments. The amendment to case no. C-7892 required the sentence in that case to run consecutively to the sentence in the Knox County case. The amendment in case no. C-7893 changed the time the defendant would have to serve before being eligible for release.

The only issue raised in this appeal is whether the trial judge had jurisdiction to amend these judgments. We find he did not have jurisdiction to amend the judgments, and we strike the amended judgments entered in cases no. C-7892 and no. C-7893 on November 22, 1994 and hold the amended judgments are void.

A judgment in a criminal case becomes final 30 days after entry thereof. See TENN. CODE ANN. §§ 40-20-101, 40-35-401(a) & -402(b); TENN. R. APP. P. 3(b) & 4(a); TENN. R. CRIM. P. 33(a) & 37(d). After this time, the trial judge has no jurisdiction to change the judgment. *State v. Bouchard*, 563 S.W.2d 561 (Tenn.

Crim. App. 1977); .

We do not agree with the State's argument that the judgment in case No. C-7892 creates an internal conflict sufficient to authorize amendment of these judgments. The conflict alleged must be apparent on the record. In this case, whether there was a conflict in the sentences depended upon the statements of the trial judge made at the November 22, 1994 hearing. These statements reflect a subjective recollection of the trial judge's intent. We do not question the integrity of the trial judge's intent at the time of the entry of the original judgment to do what he said he meant to do when he spoke at the November 22, 1994 hearing. However, for the stability of judgments, it is necessary that they become final after 30 days and that they not be changed unless such change is done to correct illegal sentences or is done under TENN. R. CRIM. P. § 36, which permits changes for clerical errors.

When changes are made for illegal sentences, the judgment must show on its face the sentence is illegal. In making changes for clerical error, the record in the case must show that the judgment entered omitted a portion of the judgment of the court or that the judgment was erroneously entered. The most reliable indicator that clerical error was made is the transcript of the hearing or other papers filed in connection with the proceedings which show the judgment was not correctly entered. In the absence of these supporting facts, a judgment may not be amended under the clerical error rule after it has become final.

The State argues that TENN. CODE ANN § 40-35-212(c), which provides that the trial court shall retain full jurisdiction over the defendant unless the defendant is sentenced to the Department of Corrections, allows the trial judge to amend the judgment. In *State v. Moore*, 814 S.W.2d 381 (Tenn. Crim. App. 1991), this Court held this statute did not give jurisdiction to the trial court to amend the judgment as was done in this case.

The judgments of the trial court, as amended, are reversed, and the cases

are remanded to the trial court for entry of judgments consistent with this Opinion.

Costs are assessed to the appellee, the State of Tennessee.

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John K. Byers, Senior Judge

CONCUR:

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William M. Barker, Judge

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F. Lee Russell, Special Judge