

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR 11-1030

JAMES D. HORTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 25, 2012

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT,
[NO. CR-11-148]

HONORABLE PHILLIP T.
WHITEAKER, JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant James D. Horton was charged with first-degree terroristic threatening, a Class D felony, and the misdemeanor offenses of resisting arrest, harassment, criminal trespass, fleeing, and public intoxication. After a bench trial, the trial court announced that it found Mr. Horton guilty of all of the above charges with the exception of an acquittal on the harassment charge.

Notwithstanding the fact that Mr. Horton had been acquitted of the harassment charge, the judgment and commitment order entered by the trial court on July 27, 2011, reflected convictions for all six charged offenses, including harassment. Mr. Horton was sentenced to concurrent terms of five years for first-degree terroristic threatening, one year for resisting arrest, one year for harassment, ninety days for criminal trespass, thirty days for fleeing, and thirty days for public intoxication. Mr. Horton filed a notice of appeal on July



28, 2011. On August 3, 2011, the trial court entered an amended judgment and commitment order, which removed the conviction and sentence for harassment.

In this appeal, Mr. Horton contends that the trial court lost jurisdiction to amend the judgment and commitment order after his notice of appeal was filed, and thus that the amended judgment is void, leaving the original judgment to stand. He further asserts that he had no notice that the amended judgment had been entered, and therefore did not file a notice of appeal from the amended judgment. He submits that, because the time to file his notice of appeal from the amended judgment ran, he is precluded from appealing from that judgment. Nonetheless, Mr. Horton frames this as a jurisdictional issue that may be raised at any time, and he asks that we reverse and dismiss the amended judgment, and that he be resentenced in accordance with the actual verdict.

As an initial matter, we conclude that the notice of appeal filed by Mr. Horton was effective to appeal from the amended judgment and commitment order that was subsequently entered by the trial court. Rule 2(b)(1) of the Arkansas Rules of Appellate Procedure—Criminal states that “[a] notice of appeal filed after the trial court announces a decision but before the entry of judgment or order shall be treated as filed on the day after the judgment or order is entered.” We apply Rule 2(b)(1) to the amended judgment in this case and deem the notice of appeal as filed the day after the amended judgment was entered. *See Stone v. State*, 371 Ark. 78, 263 S.W.3d 553 (2007).

We further conclude, contrary to Mr. Horton’s contention on appeal, that the trial court did not lose jurisdiction to enter the amended judgment and commitment order. The



trial court retained jurisdiction to correct errors such as this. *See McCuen v. State*, 338 Ark. 631, 999 S.W.2d 682 (1999). As clerical errors do not speak the truth, courts have the power to enter an amended judgment and commitment order nunc pro tunc to correct an erroneous judgment. *Reed v. Hobbs*, 2012 Ark. 61.

In the case at bar, the trial court announced in open court an acquittal on the harassment charge. A conviction and sentence on the harassment charge, however, was inadvertently reflected in the judgment and commitment order. To remedy the clerical error, the trial court exercised its authority and properly entered an amended judgment and commitment order removing the harassment conviction and sentence. For the reasons set forth above, the trial court had jurisdiction to enter the amended judgment and commitment order, and it supplants the original judgment.

For relief in this appeal, Mr. Horton asks that he be resentenced in accordance with the actual verdict. This, however, is unnecessary because the amended judgment and commitment order is a valid order and accurately reflects the verdicts and sentences of the trial court. Accordingly, Mr. Horton has already received the relief he now requests, and the amended judgment and commitment order is affirmed.

Affirmed.

MARTIN and HOOFFMAN, JJ., agree.

The Lane Firm, by: *Jonathan T. Lane*, for appellant.

Dustin McDaniel, Att'y Gen., by: *Rachel Hurst Kemp*, Ass't Att'y Gen., for appellee.