

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2009-07-039
 :
 - vs - : OPINION
 : 3/15/2010
 :
 CHRISTOPHER WORKMAN, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 07-CR-00011

Donald W. White, Clermont County Prosecuting Attorney, David H. Hoffmann, 123 N. Third Street, Batavia, Ohio 45103-3033, for plaintiff-appellee

Tyler P. Webb, 5374 Cox-Smith Road, Suite A, Mason, Ohio 45040, for defendant-appellant

POWELL, J.

{¶1} Defendant-appellant, Christopher Workman, appeals an order of restitution imposed by the Clermont County Court of Common Pleas on his conviction for two counts of nonsupport of dependents.

{¶2} The record indicates that appellant pled guilty in 2007 to two counts of nonsupport of dependents under R.C. 2919.21(B). Between 2007 and 2009, the trial court twice placed appellant on community control, the second time after judicial release

from prison. The trial court ordered appellant to pay his past and current child support obligation as part of his community control conditions or sanctions.

{¶3} When appellant violated his community control sanctions for the second time, he was sentenced to prison. At the sentencing hearing, the trial court ordered appellant to pay restitution in the amount of \$11,305.66 plus costs.

{¶4} Appellant filed a delayed appeal, presenting two assignments of error for our review.

{¶5} Assignment of Error No. 1:

{¶6} "THE TRIAL COURT ERRED IN ORDERING THE DEFENDANT TO PAY RESTITUTION IN THE AMOUNT OF \$11,305.66 FOR FAILURE TO PAY CHILD SUPPORT AS ORDERED."

{¶7} Assignment of Error No. 2:

{¶8} "THE TRIAL COURT ERRED IN FAILING TO STATE TO WHOM THE DEFENDANT SHALL PAY RESTITUTION."

{¶9} Contrary to appellant's arguments under his first assignment of error, trial courts are permitted under current law to require a felony defendant to pay past due child support in the form of restitution in cases involving nonsupport of dependents. *State v. Hubbell*, Darke App. No. 1617, 2004-Ohio-398, ¶10; *State v. Peterman*, Butler App. No. CA2009-06-149, 2010-Ohio-211, ¶6-10; R.C. 2929.18 (financial sanction may include restitution by offender to victim in an amount based upon victim's economic loss); cf. *State v. Stewart*, Franklin App. No. 04AP-761, 2005-Ohio-987; see, also, R.C. 2929.01.

{¶10} If a trial court requires a defendant to pay restitution as a part of his sentence for felony nonsupport of dependents, the court is limited to the amount of arrearage that accrued within the time period included in the indictment. *Hubbell* at ¶11

(restitution can be ordered only for those acts that constitute the crime for which the defendant was convicted and sentenced, but the limitation in criminal sentencing of the amount of restitution does not relieve offender of his duty to pay his child support arrearage in the court that has issued the underlying child support orders); see, also, *Peterman*.

{¶11} The transcript of the sentencing hearing indicates that the trial court ordered restitution, and both appellant and the state address the imposition of restitution in this appeal. However, the trial court's judgment entry contains no mention of restitution.

{¶12} It is well-settled law that a court speaks through its journal entries. *State v. Hillman*, Franklin App. Nos. 09AP-478, 09AP-479, 09AP-480, 2010-Ohio-256, ¶15 (oral pronouncement of judgment is not binding, and if a journal entry and the trial judge's opinion are in conflict, the journal entry controls). Insofar as restitution is not part of the trial court's journalized entry, there is no order of restitution for this court to review.

{¶13} Appellant's appeal is dismissed.

YOUNG, P.J., and BRESSLER, J., concur.