

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI,
RESPONDENT
vs.**

**LAURENCE CLEO HAYS II,
APPELLANT**

DOCKET NUMBER WD73942

DATE: FEBRUARY 5, 2013

Appeal from:

The Circuit Court of Clay County, Missouri
The Honorable Larry D. Harman, Judge

Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Alok Ahuja and Mark D. Pfeiffer, JJ.

Attorneys:

Evan J. Buchheim, for Respondent

S. Kate Webber, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI, RESPONDENT

v.

LAURENCE CLEO HAYS II, APPELLANT

WD73942

Clay County, Missouri

Before Division Two Judges: Joseph M. Ellis, P.J., Alok Ahuja and Mark D. Pfeiffer, JJ.

Appellant Laurence C. Hays, II, appeals from his conviction of three counts of statutory sodomy in the second degree, § 566.064, alleging the trial court plainly erred in permitting expert testimony regarding sexually abused children. The State contends such testimony was permissible but requests we remand the case to the trial court in order to correct a clerical error in the written sentence and judgment.

AFFIRMED IN PART; REVERSED IN PART and REMANDED.

Division Two holds:

(1) The four points of error Appellant raises on appeal lack merit, and a formal, published discussion related thereto would serve no jurisprudential purpose. Accordingly, we affirm Appellant's conviction by summary order pursuant to Rule 30.25(b).

(2) Despite the trial court's written sentence and judgment stating that it found Appellant to be only a prior offender pursuant to § 558.016, the record reflects that the trial court expressly found Appellant to be a prior *and* persistent offender pursuant to § 558.016 in that the trial court made a finding on the record, outside the presence of the jury, that Appellant was a prior and persistent offender beyond a reasonable doubt and also pronounced Appellant to be a prior and persistent offender at the sentencing hearing. Accordingly, it is clear from the record that the trial court's failure to accurately memorialize its decision that Appellant is a prior and persistent offender, as it was announced in open court, was a clerical error.

(3) Because a clerical error resulted in the written sentence and judgment failing to accurately memorialize Appellant's sentence as pronounced in open court, the case must be remanded to the trial court with instructions to enter a *nunc pro tunc* order conforming the trial court's written sentence and judgment to its finding that Appellant is a prior *and* persistent offender

Opinion by Joseph M. Ellis, Judge

Date: FEBRUARY 5, 2013

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