

BB. MISCELLANEOUS

BB.1. Nunc pro tunc entry

TITLE: Hutchinson v. State
INDEX NO.: BB.1.
CITE: (9/1/83), Ind., 452 N.E.2d 955
SUBJECT: Nunc pro tunc entry (NPTE) - reflects actual occurrence
HOLDING: Tr. Ct. did not err in making 4/22/83 NPTE of habitual offender allegation after D had been convicted & sentenced where information & judge's minute book were stamped 2/10/81 & record indicated D knew he was eligible for the habitual. Here, D contends Ct. speaks only through order book. State ex rel. Mammoth, 357 N.E.2d 732; Blum's Lumber & Crating, Inc. v. James, 285 N.E.2d 822. An order book entry may be made NPT to reflect occurrence which actually happened. Neuenschwander, (1928) 200 Ind. 64. NPTE must be made based on written memoranda, notes, etc., which must (1) be found in records of case; (2) be required by law to be kept; (3) show action taken or Ct. orders/rulings; (4) exist in records of Ct. contemporaneous with or preceding date of action described. Stowers 363 N.E.2d 978. Ct. finds tests were met to warrant a NPTE into order book. Held, no error.

RELATED CASES: Cotton, Ind., 658 N.E.2d 898 (nunc pro tunc entries rested upon sufficient written memorials & served to show that special judge qualified & assumed jurisdiction before sitting in judgment); Huffman, 502 N.E.2d 906 (NPTE makes record reflect character, terms & conditions of true action taken, *citing* Cook, 37 N.E.2d 63; here, Tr. Ct. erred in making NPTE that prosecutor's motion to continue trial was ruled upon within one year when it actually was ruled upon outside of one-year limitation of CR 4(C); held, D's conviction reversed, discharge ordered).