

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150088
	:	TRIAL NO. B-1102553
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
CRAIG HUMMONS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Craig Hummons appeals from the Hamilton County Common Pleas Court’s judgment overruling his motion to withdraw his guilty pleas. We affirm the court’s judgment.

Hummons was convicted in 2011 upon guilty pleas to aggravated robbery in violation of R.C. 2911.01(A)(1), with a specification, and felonious assault in violation of R.C. 2903.11(A)(1) and was sentenced to consecutive prison terms totaling 19 years. He did not appeal his convictions. Instead, more than three years later, he filed with the common pleas court a motion seeking to withdraw his pleas on the ground that the trial court had erred in sentencing him for both aggravated robbery and felonious assault, because the offenses were allied offenses of similar import subject to merger under R.C. 2941.25.

In this appeal from the overruling of his motion, Hummons presents a single assignment of error. The assignment of error restates his motion's allied-offenses claim and thus may fairly be read to challenge the overruling of his motion to withdraw his guilty pleas. We overrule the assignment of error because the record before us does not manifest the error of which Hummons now complains.

In deciding Hummons's motion, the common pleas court did not have before it a transcript of the proceedings at his plea and sentencing hearings, because Hummons had not appealed his convictions, and because he had not requested that the transcripts be prepared for the court's decision on his motion. *See State ex rel. Partee v. McMahan*, 175 Ohio St. 243, 248, 193 N.E.2d 266 (1963); *State v. Hawkins*, 1st Dist. Hamilton No. C-74425, 1975 Ohio App. LEXIS 7551 (July 7, 1975) (holding that an offender is entitled to a transcript of the proceedings leading to his conviction if he has pending either a direct appeal or a postconviction proceeding). Hummons did not support his motion with evidence outside the record. Nor can the record be said to otherwise demonstrate that, under the law as it existed when Hummons was sentenced, his offenses were subject to merger under R.C. 2941.25. *See State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, 942 N.E.2d 1061, ¶ 51.

The common pleas court's decision denying Hummons's motion to withdraw his guilty pleas was discretionary. *State v. Smith*, 49 Ohio St.2d 261, 361 N.E.2d 1324 (1977), paragraph two of the syllabus; *State v. Brown*, 1st Dist. Hamilton No. C-010755, 2002-Ohio-5813. And Hummons bore the burden of demonstrating that withdrawing his pleas was necessary "to correct manifest injustice." Crim.R. 32.1; *Smith* at paragraph one of the syllabus. Thus, implicit in the court's decision overruling Hummons's motion was its determination that he had failed to sustain that

burden. That determination, on the state of the record before us, cannot be said to have been arbitrary, unconscionable, or the product of an unsound reasoning process. *See State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34 (defining an “abuse of discretion”). Therefore, the court did not abuse its discretion in overruling the motion.

A court always has jurisdiction to correct a void judgment. *See State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 18-19. But Hummons’s allied-offenses challenge was not reviewable by the common pleas court under the jurisdiction to correct a void judgment, because the alleged error, even if demonstrated, would not have rendered his convictions void. *See State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 3 (holding that an allied-offenses challenge may be forfeited).

Accordingly, we affirm the court’s judgment.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., HENDON and CUNNINGHAM, JJ.

To the clerk:

Enter upon the journal of the trial court on March 2, 2016

per order of the court _____.

Presiding Judge