

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

STATE OF OHIO,	:	APPEAL NO. C-080688
Plaintiff-Appellee,	:	TRIAL NOS. B-0409680 B-0409378
vs.	:	<i>JUDGMENT ENTRY.</i>
RONNIE GAMBLE,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Ronnie Gamble appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Correct a Voidable Sentence * * * .” We affirm the court’s judgment.

In 2005, Gamble was convicted of cocaine trafficking and having a weapon under a disability. He unsuccessfully challenged his convictions in appeals to this court² and in a postconviction petition.³

In March 2008, he filed with the common pleas court a “Motion to Correct a Voidable Sentence * * * .” In his motion, Gamble cited the Ohio Supreme Court’s decisions in *State v. Foster*⁴ and *State v. Payne*⁵ in support of his contention that the trial court, by sentencing him to nonminimum and consecutive prison terms, had

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² See *State v. Gamble* (Dec. 14, 2005), 1st Dist. Nos. C-050146 and C-050147.

³ See *State v. Gamble* (Aug. 29, 2007), 1st Dist. No. C-060713.

⁴ 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

⁵ 114 Ohio St.3d 502, 2007-Ohio-4642, 873 N.E.2d 306.

denied him the right to a jury trial guaranteed under the Sixth Amendment to the United States Constitution. The court overruled the motion, and this appeal followed.

Gamble presents on appeal three assignments of error that together challenge the common pleas court's failure to grant him the relief sought by his motion. We overrule the assignments of error because the court had no jurisdiction to entertain Gamble's motion.

Gamble's appeal from his judgment of conviction had divested the common pleas court of jurisdiction over his case, except to act in aid of the appeal or in a manner not inconsistent with our jurisdiction.⁶ Because we did not remand the case, the court did not regain jurisdiction after we had decided the appeal.⁷ And while a trial court retains jurisdiction to correct its void judgments,⁸ a *Foster* error renders a sentence voidable, not void.⁹

Gamble asked the court to "[c]orrect" his sentence "pursuant to Civil Rule 60(B)(5), Incorporated By Reference Into Criminal Procedure by Criminal Rule 57(B)." But Crim.R. 57(B) instructs a court to "look to the rules of civil procedure" only "if no rule of criminal procedure exists." Crim.R. 35 governs the proceedings upon a postconviction petition. And the postconviction statutes provide "the exclusive remedy by which a person may bring a collateral challenge to the validity of a conviction or sentence in a criminal case."¹⁰ Therefore, the common pleas court

⁶ *In re Kurtzhalz* (1943), 141 Ohio St. 432, 48 N.E.2d 657, paragraph two of the syllabus; accord *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207; *State ex rel. Special Prosecutors v. Judges* (1978), 55 Ohio St.2d 94, 97, 378 N.E.2d 162.

⁷ See *State ex rel. Special Prosecutors*, 55 Ohio St.2d at 97.

⁸ See *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶18-19.

⁹ See *Payne*, 114 Ohio St.3d at ¶29.

¹⁰ R.C. 2953.21(J).

should have recast Gamble’s Civ.R. 60(B) motion as a postconviction petition and reviewed it under the standards provided by R.C. 2953.21 et seq.¹¹

Nevertheless, the court properly overruled the motion. Gamble filed his postconviction challenge to his sentences well after the time afforded under R.C. 2953.21(A)(2) had expired. And R.C. 2953.23 precluded the court from entertaining Gamble’s late postconviction challenge because he did not, as he could not, demonstrate that “but for [the alleged Sixth Amendment violations], no reasonable factfinder would have found [him] guilty of the offense[s] of which [he had been] convicted.”¹²

Because Gamble failed to satisfy the time restrictions of R.C. 2953.21 and the jurisdictional requirements of R.C. 2953.23, the common pleas court had no jurisdiction to entertain his motion. We, therefore, hold that the court properly overruled the motion, and we affirm the court’s judgment.

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

HENDON, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on September 23, 2009

per order of the Court _____
Presiding Judge

¹¹ See *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶12.

¹² R.C. 2953.23(A)(1)(b); see *State v. Connors*, 1st Dist. No. C-040677, 2005-Ohio-2644.