

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

STATE OF OHIO,	:	APPEAL NO. C-110217
	:	TRIAL NO. B-0506476
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
MARK KAEDING,	:	
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. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Defendant-appellant Mark Kaeding presents on appeal four assignments of error that together challenge the Hamilton County Common Pleas Court’s judgment overruling Kaeding’s “Motion for Relief from Judgment” without an evidentiary hearing. We affirm the court’s judgment as modified.

Kaeding was convicted of two counts of rape in 2006. He unsuccessfully challenged his convictions in his direct appeal, see *State v. Kaeding* (Nov. 7, 2007), 1st Dist. No. C-060573, appeal not accepted for review, 117 Ohio St.3d 1427, 2008-Ohio-969, 882 N.E.2d 446, and in his 2007 postconviction petition. See *State v. Kaeding* (Nov. 25, 2009), 1st Dist. No. C-080803, appeal not accepted for review, 124 Ohio St.3d 1509, 2010-Ohio-799, 922 N.E.2d 971.

In January 2011, Kaeding filed with the common pleas court his “Motion for Relief from Judgment.” The court overruled the motion, and this appeal followed.

We overrule the assignments of error because the common pleas court had no jurisdiction to entertain Kaeding's motion.

Kaeding moved for relief from his convictions "pursuant to [R.C.] 2953.23 and Civil Rule * * * 60(B)." But Civ.R. 60(B) governs the proceedings upon a motion seeking relief from a judgment entered in a civil action. See Civ.R. 1(A). Crim.R. 57(B) permits a court in a criminal matter to "look to the rules of civil procedure" only "if no rule of criminal procedure exists." Crim.R. 35 governs the proceedings upon a petition under R.C. 2953.21 et seq. for postconviction relief. 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." R.C. 2953.21(J). Therefore, the common pleas court should have reviewed Kaeding's "motion" as a postconviction petition under the standards provided by R.C. 2953.21 et seq. See *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶12.

But Kaeding satisfied neither the time restrictions of R.C. 2953.21(A)(2) nor the jurisdictional requirements of R.C. 2953.23. Therefore, R.C. 2953.21 et seq. did not confer on the common pleas court jurisdiction to entertain Kaeding's postconviction claims on their merits.

Finally, a trial court retains 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 the Double Jeopardy Clause did not bar Kaeding's rape prosecutions. See *State v. Martello*, 97 Ohio St.3d 398, 2002-Ohio-6661, 780 N.E.2d 250. And neither the claimed prosecutorial misconduct nor trial counsel's alleged ineffectiveness, even if demonstrated, would have rendered Kaeding's judgment of conviction void.

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Because the common pleas court had no jurisdiction to entertain Kaeding's postconviction motion, the motion was subject to dismissal without an evidentiary hearing. See R.C. 2953.21(C) and 2953.23(A). Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment appealed from to reflect a dismissal of the motion. And we affirm the judgment as modified.

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

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

To the Clerk:

Enter upon the Journal of the Court on December 7, 2011
per order of the Court _____.
Presiding Judge