

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

STATE OF OHIO,	:	APPEAL NO. C-130546
	:	TRIAL NOS. B-0512552
Plaintiff-Appellee,	:	B-0604789
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
GREGORY CHAMBERS,	:	
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 Gregory Chambers appeals from the Hamilton County Common Pleas Court’s judgments overruling his “Petition: to Vacate and Correct Void Community Control Sentence” and his “Motion for Resentencing Pursuant to [R.C.] 2947.23(A)(1).” We affirm the court’s judgments.

In May 2006, in the case numbered B-0512552, Chambers was convicted upon his guilty plea to cocaine possession. The trial court imposed the agreed sentence of time served and one year of community control. Chambers did not appeal that conviction.

In November 2006, in the case numbered B-0604789, Chambers was convicted upon jury verdicts finding him guilty of cocaine possession and trafficking. Based on those convictions, he was also convicted of violating the terms of the community-control sanction imposed for his possession conviction in the case numbered B-0512552.

For his community-control violation, he was sentenced to a term of confinement of 12 months, to be served consecutively to the possession and trafficking sentences imposed in the case numbered B-0604789. For his possession and trafficking offenses, he was initially sentenced to consecutive prison sentences totaling 18 years. But in 2008, on remand from this court, the offenses were merged, and he was resentenced to ten years for trafficking only. *See State v. Chambers*, 1st Dist. Nos. C-060922 and C-061036, 2008-Ohio-470, *appeal not accepted*, 118 Ohio St.3d 1464, 2008-Ohio-2823, 888 N.E.2d 1115.

Chambers then unsuccessfully challenged his trafficking conviction in direct appeals to this court and the Ohio Supreme Court, *State v. Chambers*, 1st Dist. No. C-080751 (May 20, 2009), *appeal not accepted*, 123 Ohio St.3d 1409, 2009-Ohio-5031, 914 N.E.2d 206, and in a series of postconviction motions. *See, e.g., State v. Chambers*, 1st Dist. No. C-081060 (Mar. 11, 2009); *State v. Chambers*, 1st Dist. No. C-100703 (Aug. 3, 2011); *State v. Chambers*, 1st Dist. Nos. C-110633 and C-110634 (Apr. 18, 2012).

From his community-control conviction, Chambers took no direct appeal. Instead, he challenged the conviction collaterally in postconviction motions filed in 2012 and 2013. In his 2012 “Petition: to Vacate and Correct Void Community Control Sentence,” he challenged the “terminat[ion]” of his community control without a hearing. In his 2013 “Motion for Resentencing,” he asked the court to vacate its order of court costs, because the court had not, as required by R.C. 2947.23, notified him at sentencing that he could be ordered to serve community service if he did not pay the costs. In this appeal, he presents two assignments of error, challenging the overruling of his 2012 “Petition” and his 2013 “Motion.”

We note, as a preliminary matter, that Chambers filed this appeal in both the case numbered B-0512552 and the case numbered B-0604789. But his notice of appeal, with its attached judgment entries, along with the two assignments of error advanced in this appeal, make plain his intention to challenge on appeal only the overruling of the postconviction motions challenging his community-control-violation conviction in the case numbered B-0512552. Thus, the appeal is subject to dismissal as abandoned to the extent that it purports to be taken from the proceedings in the case numbered B-0604789.

We overrule the assignments of error, because the court had no jurisdiction to entertain Chambers's motions. The motions were reviewable under the standards provided by R.C. 2953.21 et seq., governing the proceedings upon a postconviction petition, because Chambers did not designate in the motions the statute or rule under which he sought relief, and because 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." *See* R.C. 2953.21(J); *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12. But the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain the motions on their merits, because Chambers failed to satisfy either the time restrictions of R.C. 2953.21(A)(2) or the jurisdictional requirements of R.C. 2953.23(A)(1).

A 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 common pleas court, in deciding Chambers's motions, did not have before it a transcript of the proceedings leading to his community-control conviction, because he neither appealed the conviction nor submitted a transcript with his motions. Thus, the record

cannot be said to manifest the errors of which Chambers now complains. Moreover, we have held that the failure to provide notification concerning community service in lieu of costs does not render a sentence void. *See State v. Wurzelbacher*, 1st Dist. Hamilton No. C-130011, 2013-Ohio-4009, ¶ 11.

We, therefore, dismiss the appeal as abandoned to the extent that it purports to be taken from the proceedings in the case numbered B-0604789. And because Chambers's postconviction motions were subject to dismissal for lack of jurisdiction, we modify the judgments appealed from in the case numbered B-0512552 to reflect the dismissal of the motions, and we affirm the judgments as modified. *See* App.R. 12(A)(1)(a).

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.

CUNNINGHAM, P.J., HILDEBRANDT and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on March 26, 2014
per order of the court _____.
Presiding Judge