

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

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| STATE OF OHIO, | : | APPEAL NO. C-170544 |
| | : | TRIAL NO. B-0009175 |
| Plaintiff-Appellee, | : | |
| vs. | : | <i>OPINION.</i> |
| ANDREW BEVINS, JR., | : | |
| Defendant-Appellant. | : | |

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed in Part and Reversed in Part, and Cause Remanded

Date of Judgment Entry on Appeal: December 28, 2018

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Scott M. Heenan*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Andrew Bevins, Jr., pro se.

Per Curiam.

{¶1} Defendant-appellant Andrew Bevins, Jr., appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion for Resentencing, Motion for Final Appealable Order and Motion to Correct and Credit Defendant’s Jail Time.” We reverse the court’s judgment in part and remand for correction of jail-time credit.

{¶2} In 2005, Bevins was convicted of aggravated burglary and rape and sentenced to consecutive prison terms totaling 20 years. In the direct appeal, we remanded his case for resentencing, while affirming his convictions in all other respects. *See State v. Bevins*, 1st Dist. Hamilton No. C-050754, 2006-Ohio-6974, *appeal not accepted*, 117 Ohio St.3d 1437, 2008-Ohio-1279, 883 N.E.2d 456. From the judgment of conviction entered upon his resentencing in 2007, he failed to perfect a timely appeal, and we denied his motion for leave to file a delayed appeal.

{¶3} Bevins also challenged his convictions in a series of postconviction motions filed between 2008 and 2015. *See, e.g., State v. Bevins*, 1st Dist. Hamilton No. C-150550 (Nov. 2, 2016); *State v. Bevins*, 1st Dist. Hamilton No. C-081031 (July 22, 2009). In his 2015 “Motion for Resentencing, Motion for Final Appealable Order and Motion to Correct and Credit Defendant’s Jail Time,” Bevins sought relief from his 2007 judgment of conviction. He argued that that judgment did not constitute a final appealable order, because it did not include his sex-offender classification or notify him concerning his right to appeal the judgment or his right to appointed counsel for that appeal. He asserted that the trial court had erred in not conducting a de novo sentencing hearing and in not appointing counsel for an appeal from the judgment. And he sought correction of the trial court’s calculation of jail-time credit as reflected in that judgment.

{¶4} In this appeal, Bevins presents three assignments of error. We overrule his first and second assignments of error, contending that the common pleas court erred in denying relief upon his final-appealable-order and sentencing-hearing claims. But we sustain his third assignment of error, challenging the denial of relief upon his jail-time-credit claim.

Not Reviewable under Postconviction Statutes

{¶5} Bevins did not specify in his postconviction motion a statute or rule under which the relief sought may have been afforded. The common pleas court was, therefore, left to “recast” the motion “into whatever category necessary to identify and establish the criteria by which the motion should be judged.” *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12 and syllabus.

{¶6} R.C. 2953.21 et seq., governing the proceedings on a postconviction petition, afford relief from a conviction upon proof of a constitutional violation during the proceedings resulting in that conviction. R.C. 2953.21(A)(1)(a). But the claims advanced in Bevins’s motion were not reviewable by the common pleas court under the standards provided by the postconviction statutes. The claimed denial of his right to appointed counsel on appeal alleged a constitutional deprivation, but not one that had occurred during the proceedings resulting in his conviction. And the balance of the motion’s claims were not predicated upon the violation of a constitutional right.

{¶7} Nor was Bevins’s motion reviewable under any other postconviction statute. The motion was not reviewable under R.C. 2945.79 et seq. and Crim.R. 33 as a motion for a new trial, because the motion did not seek a new trial. The motion was also not reviewable under R.C. Chapter 2731 as a petition for a writ of

mandamus, under R.C. Chapter 2721 as a declaratory judgment action, or under R.C. Chapter 2725 as a petition for a writ of habeas corpus, when the motion did not satisfy those statutes' procedural requirements. *See* R.C. 2731.04, 2721.12(A), and 2725.04. And Crim.R. 57(B) did not require the common pleas court to review the motion under the procedures provided by Civ.R. 60(B), because Bevins's 2007 judgment of conviction had been reviewable under the procedures provided for a direct appeal. *See State v. Smith*, 1st Dist. Hamilton Nos. C-150445 and C-150446, 2016-Ohio-3521, ¶ 19.

No Jurisdiction to Correct Judgment as Void

{¶8} 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. And a judgment of conviction is void to the extent that a sentence is unauthorized by statute or does not include a statutorily mandated term, or if the trial court lacks subject-matter jurisdiction or the authority to act. *See State v. Wurzelbacher*, 1st Dist. Hamilton No. C-130011, 2013-Ohio-4009, ¶ 8; *State v. Grant*, 1st Dist. Hamilton No. C-120695, 2013-Ohio-3421, ¶ 9-16. *See also Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 14-15 (noting the “traditional[]” rule that, except with certain sentencing errors, a judgment is not void unless “a court acts without subject-matter jurisdiction”). By this definition, none of the grounds for relief presented in Bevins's motion, even if demonstrated, would have rendered his 2007 judgment of conviction void. *Compare State v. Lawson*, 1st Dist. Hamilton Nos. C-120077 and C-120067, 2012-Ohio-5281, ¶ 10-20 (holding that a judgment of conviction was void to the extent that it imposed S.B. 10's sex-offender registration requirements as part of the sentence for an offense committed before

S.B. 10's 2008 effective date, because the court was authorized to impose only the civil registration requirements of Megan's Law).

Correction of Jail-Time Credit

{¶9} The common pleas court erred, however, in failing to exercise its authority under Crim.R. 36 to correct the mistake in the calculation of jail-time credit reflected in Bevins's 2007 judgment of conviction.

{¶10} We note that Bevins was resentenced before the Ohio General Assembly, in 2012, enacted R.C. 2929.19(B)(2)(g) (now R.C. 2929.19(B)(2)(f)) to codify the procedures for determining and correcting jail-time credit. Therefore, the common pleas court, upon Bevins's 2015 "Motion for Resentencing, Motion for Final Appealable Order and Motion to Correct and Credit Defendant's Jail Time," could not exercise the "continuing jurisdiction" conferred by R.C. 2929.19(B)(2)(g)(iii) (now R.C. 2929.19(B)(2)(f)(iii)) to correct an error in his jail-time credit. *See State v. Morgan*, 1st Dist. Hamilton No. C-140146, 2014-Ohio-5325, ¶ 5-7.

{¶11} In 2007, when Bevins was resentenced, the Ohio Revised Code sections governing jail-time credit had been construed to impose on the trial court the duty to calculate, and to specify in the judgment of conviction, the total number of days that the offender had been "confined for any reason arising out of [his] offense," prior to his conviction for that offense. *See* R.C. 2949.08(B). The department of rehabilitation and correction was then tasked with reducing each sentence by the jail-time credit determined by the court, plus conveyance time. *See State ex rel. Rankin v. Ohio Adult Parole Auth.*, 98 Ohio St.3d 476, 2003-Ohio-2061, 786 N.E.2d 1286, ¶ 7, citing *State ex rel. Corder v. Wilson*, 68 Ohio App.3d 567, 572, 589 N.E.2d 113 (10th Dist.1991); R.C. 2967.191, 2949.08(B), and 2949.12.

{¶12} Crim.R. 36 authorizes a court to “correct[] * * * at any time” “clerical mistakes in judgments.” The rule thus authorizes the entry, at any time, of a judgment of conviction nunc pro tunc to the date of the original conviction, correcting a mistake of fact, but not an error of law, in the jail-time credit specified in a judgment of conviction. *See Heddleston v. Mack*, 84 Ohio St.3d 213, 213, 702 N.E.2d 1198 (1988); *State v. Weaver*, 1st Dist. Hamilton No. C-050923, 2006-Ohio-5072, ¶ 12. We conclude that the jail-time credit specified in Bevins’s 2007 judgment of conviction was subject to correction under Crim.R. 36.

{¶13} The record reflects an “Arrest Date/Time” for Bevins of November 15, 2000, with the qualifying parenthetical, “(Arrest date does not necessarily mean physical arrest, but may just be the issuance of a citation).” On November 22, 2000, he was indicted for aggravated burglary and rape, and a warrant was issued for his arrest on those charges. On November 28, 2000, he was in the custody of the Hamilton County Sheriff and served with the indictment. He was convicted of aggravated burglary and rape in 2005. His 2005 sentences were vacated by our 2006 decision in the direct appeal. And his 2005 judgment of conviction was superseded by the January 31, 2007 judgment of conviction entered after he was resentenced on remand.

{¶14} In Bevins’s January 31, 2007 judgment of conviction, the trial court credited him with 2,236 days, effectively establishing December 18, 2000, as the commencement date for his “confine[ment] * * * arising out of [his] offense[s].” *See* R.C. 2949.08(B). But the only events occurring on that date were the state’s filing of the bill of particulars and its response to Bevins’s demand for discovery.

{¶15} On the record before us, we can only conclude that Bevins’s confinement for his offenses began, at the latest, on November 28, 2000, when he was in the sheriff’s custody and was served with the indictment. And the days of confinement between November 28, 2000, and January 31, 2007, when he was resentenced, numbered 2,256, not 2,236.

{¶16} The trial court’s miscalculation of jail-time credit resulted from a mistake of fact concerning the commencement date for Bevins’s preconviction confinement. Therefore, the common pleas court had the authority under Crim.R. 36 to correct that miscalculation at any time. We hold that the court erred in declining to exercise that authority.

We Reverse in Part and Remand

{¶17} Accordingly, we reverse the common pleas court’s judgment overruling that portion of Bevins’s “Motion for Resentencing, Motion for Final Appealable Order and Motion to Correct and Credit Defendant’s Jail Time” seeking correction of his jail-time credit. And we remand for the entry of a judgment of conviction, nunc pro tunc to the date of his 2007 judgment of conviction, specifying the correct number of days of preconviction confinement.

{¶18} In all other respects, we affirm the judgment of the common pleas court.

Judgment affirmed in part and reversed in part, and cause remanded.

MOCK, P.J., ZAYAS and MILLER, JJ.

Please note:

The court has recorded its own entry on the date of the release of this opinion.