

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

STATE OF OHIO,	:	APPEAL NO. C-170703
Plaintiff-Appellee,	:	TRIAL NO. B-0805964
vs.	:	<i>OPINION.</i>
DION JACKSON,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed as Modified 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 Respondent-Appellee,

Dion Jackson, pro se.

Per Curiam.

{¶1} Defendant-appellant Dion Jackson appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion for Resentencing[:] Sentence Contrary to Ohio Law Pursuant to R.C. 2967.28(B).” We affirm the court’s judgment overruling the motion, but remand for the proper imposition of postrelease control.

{¶2} Jackson was convicted in 2009 of murder and felonious assault. We affirmed his convictions on direct appeal. *State v. Jackson*, 1st Dist. Hamilton No. C-090414, 2010-Ohio-4312, *appeals not accepted*, 127 Ohio St.3d 1486, 2010-Ohio-6371, 939 N.E.2d 184.

{¶3} In 2016, Jackson filed with the common pleas court his “Motion for Resentencing[:] Sentence Contrary to Ohio Law Pursuant to R.C. 2967.28(B).” In that motion, he sought correction of that portion of his sentences imposing postrelease control. In this appeal, Jackson advances a single assignment of error challenging the overruling of that motion.

{¶4} Jackson did not specify in his motion a statute or rule under which the relief sought might have been afforded, leaving the common pleas court 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. The postrelease-control claim advanced in his postconviction motion was not reviewable under the standards provided by R.C. 2953.21 et seq., governing the proceedings on a petition for postconviction relief, because the claim sought relief based on an alleged statutory, rather than constitutional, violation. *See* R.C. 2953.21(A)(1). Nor could relief upon that claim

have been afforded under any other postconviction procedure provided by statute or the criminal rules. *See State v. Dardinger*, 1st Dist. Hamilton No. C-160467, 2017-Ohio-1525, ¶ 8-9.

{¶5} A court always has jurisdiction to correct a void judgment. *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 18-19. We conclude that the common pleas court had jurisdiction to correct the postrelease-control portion of Jackson’s felonious-assault sentence, because that sentence was void to the extent that he was not properly notified concerning postrelease control.

{¶6} In sentencing Jackson in 2009 for murder, the trial court was not required to notify him concerning postrelease control, because the postrelease-control statutes did not then (as they do not now) authorize postrelease control for the special felony of murder. *See State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 36; *accord State v. Baker*, 1st Dist. Hamilton No. C-050791, 2006-Ohio-4902, ¶ 4-6. In sentencing him for the second-degree felony of felonious assault, the trial court was required to provide at the sentencing hearing, and to incorporate into the judgment of conviction, notice that Jackson would be subject to a mandatory three-year term of postrelease-control supervision, and that the adult parole authority “would administer the postrelease control pursuant to R.C. 2967.28, including subjecting him to consequences up to and including prison time for violating postrelease control.” *State v. Grimes*, 151 Ohio St.3d 19, 2017-Ohio-2927, 85 N.E.3d 700, ¶ 25. *See* former R.C. 2929.19(B)(3)(c) and (e) and 2967.28(B)(2), superseded in 2011 by R.C. 2929.19(B)(2)(c) and (e) and 2967.28(B).

{¶7} At the sentencing hearing, the trial court told Jackson that the felonious assaults charged in counts three and four of the indictment “will merge” and advised him that “[b]efore you would be released *the parole board will determine your postrelease control sanctions,*” that “[y]ou *may have five years—you may be eligible for postrelease control which is five years if the parole board determines that,*” and that “[i]f you’re on postrelease control and you violate postrelease control supervision or condition, the parole board may impose a prison term as part of the sentence.” (Emphasis added.) In the judgment of conviction, the court again stated, “Count #4 is merged with count #3 for the purpose of sentencing,” yet went on to impose postrelease control “[a]s part of the sentence in this case as to *counts #3 and #4.*” (Emphasis added.) The court further stated that “the defendant *shall be supervised by the adult parole authority after defendant leaves prison, which is referred to as post-release control, for five (5) years.*” (Emphasis added.) And the court advised Jackson of the consequences of violating the terms of his postrelease-control supervision.

{¶8} Thus, the trial court improperly imposed postrelease control as a sanction for the “merge[d]” felonious assault charged in count four of the indictment. The court also misadvised Jackson at sentencing concerning the duration and mandatory nature of the postrelease-control sanction imposed for the felonious assault charged in count three. And the postrelease-control notification incorporated into the judgment of conviction, while properly characterizing the term of postrelease-control supervision as mandatory, misstated its duration.

{¶9} When postrelease control is not properly imposed, that portion of the sentence is void, and the offending portion of the sentence is subject to review and

correction at any time, whether on direct appeal or upon a collateral challenge. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, paragraph one of the syllabus and ¶ 27. The postrelease-control portion of Jackson’s felonious-assault sentence is void to the extent it was not imposed in conformity with the statutory mandates concerning postrelease control. And because his motion brought the matter to the common pleas court’s attention, the court had jurisdiction to review and correct the offending portions of that sentence.

{¶10} Because no postconviction statute conferred upon the common pleas court jurisdiction to entertain Jackson’s “Motion for Resentencing[:] Sentence Contrary to Ohio Law Pursuant to R.C. 2967.28(B),” the motion was subject to dismissal. Accordingly, we overrule the assignment of error, and 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.

{¶11} But the postrelease-control portion of Jackson’s felonious-assault sentence is void. We, therefore, remand this case for correction of the offending portion of that sentence in accordance with the law and this opinion.

Judgment accordingly.

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.