

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

STATE OF OHIO,	:	APPEAL NO. C-190289
	:	TRIAL NO. B-9609928
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
EDWARD SMITH,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Edward Smith advances two assignments of error on appeal, both challenging the Hamilton County Common Pleas Court’s judgment denying his motion to vacate his conviction and sentence. In 1998, following Mr. Smith’s conviction for murder and an accompanying firearm specification, this court reversed the trial court’s judgment and remanded for a new trial. *See State v. Smith*, 130 Ohio App.3d 360, 720 N.E.2d 149 (1st Dist.1998). On remand, the jury once again found Mr. Smith guilty of murder and an accompanying firearm specification, and he received a 15-year-to-life sentence on the murder charge and a three-year sentence on the specification. Mr. Smith subsequently appealed his conviction, which this court in turn affirmed. *See State v. Smith*, 1st Dist. Hamilton No. C-990689, 2000 WL 1643583, *1 (Nov. 3, 2000). In the interim since his conviction, Mr. Smith filed numerous postconviction petitions, his most recent motion, filed in February 2019, titled “Vacate Void Judgment/Sentence.” The trial court recast this motion as a postconviction petition, ultimately denying it, as well as other pending postconviction petitions the court had before it.

On appeal, Mr. Smith contends that the trial court erred in recasting his motion and denying it. However, despite the name, Mr. Smith's motion seemingly alleged constitutional violations, contending his double jeopardy and due process rights were violated because the state did not inform him, during the second trial, of the firearm specification accompanying his murder charge. Consequently, as to the extent Mr. Smith's motion alleged constitutional violations, the court below properly recast his motion as a petition for postconviction relief. *See State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12 ("Courts may recast irregular motions into whatever category necessary to identify and establish the criteria by which the motion should be judged."); *State v. Young*, 1st Dist. Hamilton No. C-170628, 2019-Ohio-134, ¶ 5 ("A common pleas court may grant relief from a conviction under R.C. 2953.21 et seq., the postconviction statutes, upon proof of a constitutional violation during the proceedings resulting in the conviction."); R.C. 2953.21(A)(1)(a).

While R.C. 2953.21 generally permits a petitioner's collateral attack upon a judgment of conviction, here the trial court lacked jurisdiction to review Mr. Smith's motion, as his motion was both untimely and successive. When Mr. Smith filed his tenth postconviction motion in February 2019, the statutory deadline for filing a timely postconviction petition had long since passed. *See* R.C. 2953.21(A)(2) ("[A] petition under division (A)(1) of this section shall be filed no later than three hundred sixty-five days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction[.]"). Further, Mr. Smith failed to demonstrate that one of the exceptions in R.C. 2953.23(A) applied. *See State v. Apanovitch*, 155 Ohio St.3d 358, 2018-Ohio-4744, 121 N.E.3d 351, ¶ 38 ("By providing that a court 'may not entertain' an untimely or successive postconviction petition except in limited circumstances, R.C. 2953.23(A) plainly prohibits a court from hearing and deciding on the merits a petition that does not meet one of the exceptions."). Consequently, as to the alleged constitutional claims, the postconviction statutes did not confer upon the court jurisdiction to entertain Mr. Smith's motion.

Nor, upon review of his motion, do we see another avenue by which the trial court may have exercised jurisdiction. *See State v. Ellis*, 1st Dist. Hamilton No. C-180331, 2019-Ohio-3164, ¶ 6 (explaining that the defendant’s motions were “not reviewable as motions for a new trial under Crim.R. 33 or as motions to withdraw a guilty or no-contest plea under Crim.R. 32.1, because [the defendant] was convicted following a jury trial, not upon guilty or no-contest pleas, and his motions did not seek a new trial.”); *State v. Dardinger*, 1st Dist. Hamilton No. C-160467, 2017-Ohio-1525, ¶ 9 (noting the defendant’s motions were not reviewable as a writ of mandamus, as a declaratory judgment, or as a writ of habeas corpus).

Although a trial court always possesses jurisdiction to correct a void judgment, no such circumstances existed here. *See State v. Wurzelbacher*, 1st Dist. Hamilton No. C-130011, 2013-Ohio-4009, ¶ 7, citing *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 18-19 (noting a court’s authority to correct a void judgment); *Young*, 1st Dist. Hamilton No. C-170628, 2019-Ohio-134, at ¶ 7 (“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[.]”). In his motion, Mr. Smith challenged his sentence, seemingly asserting his 15-year-to-life sentence for murder was contrary to law, and thus void, because the court failed to state in its entry that his sentence was “an indefinite term” of 15-years-to-life pursuant to R.C. 2929.02(B). The trial court here sentenced Mr. Smith to “15 years — Life in Prison,” in accordance with R.C. 2929.02(B), but left out the term “indefinite.” *See* former R.C. 2929.02(B) (“Whoever is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code shall be imprisoned for an indefinite term of fifteen years to life[.]”). However, we find the court’s failure to use the term “indefinite” inconsequential here as the indefinite nature of Mr. Smith’s 15-year-to-life prison term is evident from the absence of a certain number of years and the presence of a range defined by minimum (i.e., 15 years) and maximum (i.e., life) terms. *See State v. Johnson*, 8th Dist. Cuyahoga No. 108419, 2020-Ohio-191, ¶ 18, quoting *State v. Wolfe*, 2d Dist. Montgomery Nos. 26681, 26729 and

26983, 2016-Ohio-4897, ¶ 14 (“A prison term of ‘fifteen years to life’ for murder is, by its nature, indefinite because it is a prison range defined by minimum and maximum terms. And because ‘the indefinite nature of the 15-year-to-life prison term is apparent since the term is not a specific number of years,’ the omission of the term ‘indefinite’ does not alter the sentence.”). Accordingly, the absence of the term “indefinite” here does not render Mr. Smith’s sentence void. *See id.* at ¶ 18; *State v. Bandy*, 8th Dist. Cuyahoga No. 108676, 2020-Ohio-808, ¶ 6 (“[W]e find that [the defendant’s] sentence is not void despite the trial court failing to include the term ‘indefinite’ in [his] sentence.”); *State v. Albert*, 10th Dist. Franklin No. 19AP-780, 2020-Ohio-3154, ¶ 5 (“ A prison sentence of fifteen years to life is inherently indefinite, and the law does not require that the sentencing entry add a redundant adjective to that effect.”).

Because the trial court lacked jurisdiction to grant Mr. Smith the relief he sought, the court’s entry denying his petition is appropriately modified to reflect its dismissal. *See* App.R. 12(A)(1)(a). 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.

MYERS, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on June 10, 2020,
per order of the court_____.

Presiding Judge