

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

STATE OF OHIO,	:	APPEAL NO. C-190437
Plaintiff-Appellee,	:	TRIAL NO. B-1100833
vs.	:	<i>JUDGMENT ENTRY.</i>
PAUL ADAMS,	:	
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 Paul Adams appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Vacate Void Judgment.” We dismiss the appeal for lack of jurisdiction.

Adams was convicted in 2011 upon jury verdicts finding him guilty of aggravated burglary and two counts of aggravated robbery and was sentenced to consecutive prison terms totaling 21 years. We affirmed his convictions on direct appeal. *State v. Adams*, 1st Dist. Hamilton No. C-120059, 2013-Ohio-926, *delayed appeal denied*, 136 Ohio St.3d 1472, 2013-Ohio-3790, 993 N.E.2d 777.

In 2014, Adams filed a motion seeking resentencing on grounds including the trial court’s failure to make the findings required by R.C. 2929.14(C)(2) for imposing

consecutive sentences. The trial court thereafter entered an amended judgment of conviction, nunc pro tunc to 2011, to include consecutive-sentencing findings.

Adams also challenged his convictions in postconviction motions filed in 2015 and 2019. In his 2019 “Motion to Vacate Void Judgment,” from which this appeal derives, he again sought resentencing based on the trial court’s failure in 2011 to make the statutorily mandated consecutive-sentencing findings. In this appeal, he presents a single assignment of error challenging the overruling of that motion. Because we lack jurisdiction to review the judgment overruling that motion, we do not reach the merits of the assignment of error.

Adams did not designate in his motion a statute or rule under which the relief sought may 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. But the common pleas court had no jurisdiction to entertain the motion.

The 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 it did not, as required by R.C. 2953.21(A)(1), allege a constitutional violation. *See State v. Littlepage*, 1st Dist. Hamilton Nos. C-170207 and C-170157, 2018-Ohio-2959, ¶ 5, citing *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, ¶ 26 (holding that sentencing findings are not constitutionally mandated). Nor was the motion reviewable as a motion for a new trial under Crim.R. 33 or a motion to withdraw a guilty or no-contest plea under Crim.R. 32.1, because Adams was convicted not upon guilty or no-contest pleas, but following a jury trial, and his motion did not seek a new trial. The

motion was 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, because the motion did not satisfy those statutes' procedural requirements. *See* R.C. 2731.04, 2721.12(A), and 2725.04. Crim.R. 57(B) did not require the common pleas court to entertain the motion under Civ.R. 60(B), because Adams's sentences were 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, ¶ 17-19. And his sentences were not correctable under the 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, when the failure to make consecutive-sentencing findings would not have rendered his sentences void. *See Littlepage* at ¶ 12; *see also State v. Harper*, Slip Opinion No. 2020-Ohio-2913, ___ N.E.3d ___, ¶ 4-6 and 41 (“realign[ing]” void-voidable jurisprudence with “the traditional understanding of what constitutes a void judgment” to hold that “[w]hen a case is within a court’s subject-matter jurisdiction and the accused is properly before the court, any error in the exercise of that jurisdiction in imposing postrelease control renders the court’s judgment voidable,” not void).

Moreover, this court has no jurisdiction to review the judgment overruling the motion. Article IV, Section 3(B)(2), Ohio Constitution, confers upon an intermediate appellate court only “such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district.” The common pleas court’s entry overruling the motion is not a judgment of conviction and thus is plainly not reviewable under our jurisdiction under R.C. 2953.02 or 2953.08 to review on direct appeal a criminal conviction.

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Because the motion was not reviewable by the common pleas court under the postconviction statutes, the entry overruling the motion was not appealable under our jurisdiction under R.C. 2953.23(B) to review an order awarding or denying postconviction relief. Finally, the entry overruling the motion did not constitute a “final order” as defined by R.C. 2505.02, for purposes of the grant of jurisdiction under R.C. 2505.03(A) to review and affirm, modify, or reverse a “final order, judgment or decree” : the entry was not made in a special statutory proceeding, *see* R.C. 2505.02(B)(2) and (A)(2); and because the common pleas court lacked jurisdiction to entertain the motion, the entry overruling the motion did not have the effect of determining an “action” or denying a “provisional remedy” in a proceeding ancillary to a pending action. *See* R.C. 2505.02(B)(1), (B)(2), and (B)(4)(a); *Littlepage* at ¶ 4-12.

We have no jurisdiction to review the common pleas court’s judgment overruling Adams’s “Motion to Vacate Void Judgment.” Accordingly, we dismiss this appeal.

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.

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

To the clerk:

Enter upon the journal of the court on May 27, 2020
per order of the court _____
Presiding Judge