

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

STATE OF OHIO,	:	APPEAL NO. C-190500
Plaintiff-Appellee,	:	TRIAL NO. B-9904082
vs.	:	<i>JUDGMENT ENTRY.</i>
GREGORY SCOTT,	:	
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 Gregory Scott appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Vacate Sentence Due to Void, Invalid Plea Agreement.” We affirm the court’s judgment as modified to dismiss the motion.

Scott was convicted in 2000 upon guilty pleas to aggravated robbery and aggravated murder. The trial court imposed for aggravated robbery a ten-year prison term and for aggravated murder an agreed term of life with parole eligibility after 20 years, with a consecutive three-year term for the accompanying firearm specification, and ordered that those sentences be served concurrently. Scott took no direct appeal from his convictions. Nor did he appeal the common pleas court’s judgment overruling his 2013 motion under Crim.R. 32.1 to withdraw his pleas.

In 2019, Scott filed with the common pleas court his “Motion to Vacate Sentence Due to Void, Invalid Plea Agreement,” seeking an order vacating his sentences on the ground that the plea form and his trial counsel’s advice had been “misleading.” He asserted, and offered evidence outside the record of the proceedings leading to his pleas to support his assertion, that trial counsel had misinformed him that he could be

released from prison after 22 years and could seek judicial release after ten years. He further asserted, without outside evidence, that he had executed the plea form “under the influence of drugs * * * administered by [the HCJC],” contrary to the form’s statement that he was not then under the influence of drugs. And with reference to the generic postrelease-control admonition contained in the plea form, he asserted that his aggravated-murder sentence improperly included an unauthorized term of postrelease control.

In this appeal from the overruling of that motion, Scott advances a single assignment of error that essentially restates the claims presented in the motion. The assignment of error may thus be read to challenge the overruling of the motion.

In his motion, Scott did not designate 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. Because Scott did not cite Crim.R. 32.1 or seek the withdrawal of his guilty pleas, the motion was not reviewable under the standards provided by Crim.R. 32.1. He instead sought relief in the form of an order vacating his sentences, based on an alleged deprivation of the right to the effective assistance of counsel, secured by the Sixth Amendment to the United States Constitution and Article I, Section 10, of the Ohio Constitution. Because Scott sought relief from his sentences based on an alleged constitutional violation during the proceedings resulting in his convictions, the motion was reviewable under R.C. 2953.21 et seq., governing the proceedings upon a petition for postconviction relief. *See* R.C. 2953.21(A)(1); *State v. Temaj-Felix*, 1st Dist. Hamilton No. C-140138, 2015-Ohio-3967, ¶ 9. *Compare Schlee* at 156-157 (reaffirming the holding in *State v. Bush*, 96 Ohio St.3d 235, 236, 2002-Ohio-3993, 773 N.E.2d 522, that a Crim.R. 32.1 motion may not be recast as an R.C. 2953.21 postconviction petition).

But the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain the motion. Scott filed the motion well after the time prescribed by R.C. 2953.21(A)(2) had expired. And he failed to satisfy the jurisdictional

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requirements for entertaining a late postconviction claim, when the petition and its supporting evidentiary material, along with the record, cannot be said to demonstrate that, but for the claimed constitutional violation, “no reasonable factfinder would have found [him] guilty of the offense[s] of which [he] was convicted.” See R.C. 2953.23(A)(1)(b).

Nor could relief have been afforded 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. Scott’s ineffective-counsel claim, even if demonstrated, would not have rendered his convictions void. See *State v. Hayes*, 1st Dist. Hamilton No. C-130450, 2014-Ohio-1263, ¶ 5. The imposition of postrelease control for the unclassified felony of aggravated murder renders that part of the sentence void. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 36; *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, paragraph one of the syllabus and ¶ 27. But the trial court did not incorporate into Scott’s judgment of conviction, and thus did not impose for aggravated murder, an unauthorized term of postrelease control.

Because the common pleas court had no jurisdiction to entertain Scott’s “Motion to Vacate Sentence Due to Void, Invalid Plea Agreement,” the motion was subject to dismissal without a hearing. See R.C. 2953.21(D) and 2953.23(A). Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment appealed to reflect the dismissal of the motion. And we affirm the judgment as modified.

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.

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

To the clerk:

Enter upon the journal of the court on May 6, 2020,
per order of the court _____.

Presiding Judge