

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

STATE OF OHIO,	:	APPEAL NO. C-170432
	:	TRIAL NO. B-0606853
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
KEVIN PRYOR,	:	
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 Kevin Pryor appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Vacate Trial Court Nunc Pro Tunc Order[s] Filed Dec. 15, 2006 and Feb. 12, 2007.” Because the common pleas court had no jurisdiction to grant the relief sought in that motion, we affirm the court’s judgment as modified to dismiss the motion.

In 2006, a jury found Pryor guilty of murder and tampering with evidence, along with accompanying firearm specifications. At the sentencing hearing, the trial court imposed prison terms of 15 years to life for murder, five years for tampering, and three years for the specifications, and ordered that those prison terms be served consecutively for a total of 23 years to life. But the judgment of conviction entered December 8, 2006, indicated a prison term of “5 days” for tampering. On December 15, 2006, the trial court entered a judgment of conviction nunc pro tunc to December 8, correcting the prison

term imposed for tampering to reflect the five-year prison term imposed at the sentencing hearing. That correction was also reflected in the trial court's February 12, 2007 "corrected and amended" judgment of conviction, also entered nunc pro tunc to December 8, 2006. The following year, we affirmed Pryor's convictions in his direct appeal. *State v. Pryor*, 1st Dist. Hamilton No. C-070108 (June 11, 2008), *appeal not allowed*, 123 Ohio St.3d 1491, 2009-Ohio-6015, 916 N.E.2d 1072.

In 2017, Pryor filed with the common pleas court his "Motion to Vacate Trial Court Nunc Pro Tunc Order[s] Filed Dec. 15, 2006 and Feb. 12, 2007." In his motion, he asked the court to vacate as void the December 2006 and February 2007 judgments of conviction. He asserted that he had been denied a final appealable order because those entries violated the "one document" rule of Crim.R. 32(C). And he argued that Crim.R. 36 did not permit correction of his five-day tampering sentence, and that "modify[ing]" that sentence to a five-year prison term after he had served the five days denied him the constitutionally secured protections against double jeopardy.

In this appeal, Pryor presents two assignments of error that essentially restate the grounds for relief advanced in the motion and thus may fairly be read to challenge the denial of the relief sought in his motion on those grounds. We address the assignments of error together and overrule them, because the common pleas court lacked jurisdiction to grant that relief.

Pryor did not designate 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. His double-jeopardy claim was reviewable by the common pleas court under the standards provided by R.C. 2953.21 et seq., governing the

proceedings upon a petition for postconviction relief. *See* R.C. 2953.21(A)(1). But those statutes did not confer upon the court jurisdiction to entertain the claim, because Pryor filed his motion well after the time prescribed by R.C. 2953.21(A)(2) had expired, and he failed to satisfy the jurisdictional requirements for entertaining a late postconviction claim, when the record does not, as it could not, demonstrate that, but for the claimed constitutional deprivation, “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 did the common pleas court err in declining to grant relief upon the motion’s other claims. His Crim.R. 32(C) and Crim.R. 36 challenges were not reviewable under the postconviction statutes, because they did not allege a constitutional violation. Nor were the claims reviewable under Crim.R. 33 as a motion for a new trial or under Crim.R. 32.1 as a motion to withdraw a guilty plea, when Pryor had been convicted following a trial, and his motion did not request a new trial. The claims were 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. And they were not reviewable under Civ.R. 60(B), upon the authority of Crim.R. 57(B), because Pryor’s convictions were reviewable and had, in fact, been reviewed under the procedures provided for a direct appeal.

Finally, Pryor’s tampering conviction was not subject to correction 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. His claim that the December 2006 and February 2007 nunc pro tunc entries violated Crim.R. 32(C)’s “one document” rule fails in its central premise, because he stands convicted not upon multiple entries, but upon the February 2007 judgment of conviction entered nunc pro tunc to the date of the

December 8, 2006 judgment of conviction, the 2007 entry superseded the December 15, 2006 nunc pro tunc entry, and the 2007 entry contained the elements required under Crim.R. 32(C) for a final appealable order. *See State v. Lester*, 130 Ohio St.3d 303, 2011-Ohio-5204, 958 N.E.2d 142, paragraph one of the syllabus. The 2007 entry was also authorized under Crim.R. 36 to correct the clerical error in the original entry, imposing a five-day prison term for tampering, by imposing the five-year term authorized for the offense, *see* R.C. 2921.12(B) and 2929.14(A)(3)(a), and actually imposed at the sentencing hearing. And that correction, made after Pryor had served more than five days, could not be said to implicate the double-jeopardy protection against multiple punishments, because he had no legitimate expectation in the finality of a five-day tampering sentence, when he knew, or should have known, that the sentence was “legally incomplete.” *See State v. Singleton*, 124 Ohio St.3d 173, 2009-Ohio-6434, 920 N.E.2d 958, ¶ 33. *Accord State v. Dardinger*, 1st Dist. Hamilton No. C-160467, 2017-Ohio-1525, ¶ 15.

Because the common pleas court had no jurisdiction to entertain Pryor’s “Motion to Vacate Trial Court Nunc Pro Tunc Order[s] Filed Dec. 15, 2006 and Feb. 12, 2007,” the motion was subject to dismissal. Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment appealed from to reflect the dismissal of the motion. 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.

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

To the clerk:

Enter upon the journal of the court on September 5, 2018
per order of the court _____.

Presiding Judge