

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

STATE OF OHIO,	:	APPEAL NO. C-190022
Plaintiff-Appellee,	:	TRIAL NO. B-1100001
vs.	:	<i>JUDGMENT ENTRY.</i>
CHRISTOPHER DANGERFIELD,	:	
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 Christopher Dangerfield appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Correct Void/Invalid Sentence.” We affirm the court’s judgment as modified to dismiss the motion.

On April 15, 2013, Dangerfield was convicted of aggravated murder and sentenced to a prison term of life with parole eligibility after 25 years and a mandatory five-year period of postrelease control. Eight days later, the trial court entered a “correct[ed]” judgment of conviction, nunc pro tunc to April 15, 2013, removing the unauthorized term of postrelease control and including, instead, notification concerning parole.

Dangerfield unsuccessfully challenged his conviction on direct appeal and in postconviction motions filed in 2015, 2016, 2017, and 2018. *See State v. Dangerfield*, 1st Dist. Hamilton Nos. C-130305 and C-130301, 2014-Ohio-1638, *appeals not accepted*, 140 Ohio St.3d 1439, 16 N.E.3d 683 (2014); *State v. Dangerfield*, 1st Dist. Hamilton Nos. C-160566 and C-160709 (Nov. 17, 2017); *State v. Dangerfield*, 1st Dist. Hamilton No. C-

180198 (Aug. 29, 2018). In the 2018 motion from which this appeal derives, he sought a new sentencing hearing on the ground that the trial court, by correcting his sentence with a nunc pro tunc entry, had denied him his right of allocution and his rights to be present at sentencing and to notice concerning his appellate rights. In this appeal, he advances three assignments of error that, read together, challenge the overruling of that motion. We overrule the assignments of error upon our determination that the common pleas court had no jurisdiction to entertain the motion.

Dangerfield 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. The due-process protections afforded by the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 10, of the Ohio Constitution secure a criminal defendant’s right, embodied in Crim.R. 43(A), to be present at all critical stages of his trial, and his right, embodied in Crim.R. 32(B), to notice concerning his appellate rights. *See State v. Williams*, 6 Ohio St.3d 281, 286, 452 N.E.2d 1323 (1983); *Wolfe v. Randle*, 267 F.Supp.2d 743, 746-747 (S.D. Ohio 2003), citing *Peguero v. United States*, 526 U.S. 23, 119 S.Ct. 961, 143 L.Ed.2d 18 (1999). Because Dangerfield’s right-to-be-present and notice-of-appellate-rights claims sought relief based on alleged constitutional violations during the proceedings resulting in his conviction, they were 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 the postconviction statutes did not confer upon the court jurisdiction to entertain those claims, because Dangerfield 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 deprivations, “no reasonable factfinder would have found [him] guilty of the offense 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 right-of-allocation claim. That claim was not reviewable under the postconviction statutes, because the failure to afford the right of allocation, while a violation of Crim.R. 32(A)(1), is not a constitutional violation. *See Hill v. United States*, 368 U.S. 424, 428, 82 S.Ct. 468, 7 L.Ed.2d 417 (1962); *State v. Roberts*, 137 Ohio St.3d 230, 2013-Ohio-4580, 998 N.E.2d 1100, ¶ 104. The claim was not reviewable under the standards provided by Crim.R. 33, governing a motion for a new trial, or by Crim.R. 32.1, governing a motion to withdraw a guilty plea, when Dangerfield had been convicted upon a guilty plea, not following a trial, and did not seek to withdraw that plea. The claim was not reviewable under R.C. Chapter 2731, governing mandamus proceedings, under R.C. Chapter 2721, governing declaratory judgment actions, or under R.C. Chapter 2725, governing habeas corpus, because the motion did not satisfy those statutes’ procedural requirements. And the claim was not reviewable under Civ.R. 60(B), upon the authority of Crim.R. 57(B), because Dangerfield’s conviction was reviewable and had, in fact, been reviewed under the procedures provided for a direct appeal.

Finally, the common pleas court could not have granted Dangerfield a new sentencing hearing under its 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. Postrelease control is not authorized for a special felony like aggravated murder. *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. And the trial court, at

sentencing, did not notify Dangerfield concerning postrelease control, but instead properly advised him concerning parole. Crim.R. 36 authorizes a court to “correct[] \* \* \* at any time” “clerical mistakes in judgments.” And when, as here, a trial court mistakenly includes postrelease-control language in the judgment of conviction for an unclassified felony, the entry of a nunc pro tunc judgment of conviction “simply delet[ing] a postrelease-control provision that should not have been included in the initial [judgment of conviction]” is not error, does not render the sentence void, and does not require a new sentencing hearing. *State ex rel. Roberts v. Marsh*, 156 Ohio St.3d 440, 2019-Ohio-1569, 128 N.E.3d 222, ¶ 11.

Because the common pleas court had no jurisdiction to entertain Dangerfield’s “Motion to Correct Void/Invalid Sentence,” 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 is 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 BERGERON, JJ.**

To the clerk:

Enter upon the journal of the court on March 25, 2020,  
per order of the court\_\_\_\_\_.

Presiding Judge