

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

STATE OF OHIO,	:	APPEAL NO. C-210310
	:	TRIAL NO. B-0405710
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
MALLON ROBERTS,	:	
Defendant-Appellant.	:	

The court sua sponte removes this case from the regular calendar and places it on the court's accelerated calendar, 1st Dist. Loc.R. 11.1.1(A), 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 Mallon Roberts appeals the Hamilton County Common Pleas Court's judgment denying his motion challenging the subject-matter jurisdiction of the trial court.

Roberts was convicted of murder in 2005. He unsuccessfully challenged his conviction on direct appeal, *State v. Roberts*, 1st Dist. Hamilton No. C-050279, 2007-Ohio-856, *appeal not accepted*, 115 Ohio St.3d 1424, 2007-Ohio-5056, 874 N.E.2d 539, and in postconviction motions filed with the common pleas court in 2010, 2011, 2012, 2014, and 2015. *See State v. Roberts*, 1st Dist. Hamilton No. C-150293 (May 27, 2016); *State v. Roberts*, 1st Dist. Hamilton No. C-120781 (July 3, 2013); *State v. Roberts*, 1st Dist. Hamilton No. C-110669 (Apr. 18, 2012); *State v. Roberts*, 1st Dist. Hamilton No. C-100456 (June 3, 2011).

In March 2017, we concluded that his sentence included an unauthorized period of postrelease control and remanded the cause for the trial court to correct the

unauthorized PRC. *State v. Roberts*, 1st Dist. Hamilton No. C-150528, 2017-Ohio-1060, ¶ 13. Roberts appealed the resentencing, and we affirmed the judgment of the trial court. *State v. Roberts*, 1st Dist. Hamilton No. C-190570 (Nov. 27, 2019). Roberts did not challenge the trial court’s jurisdiction to resentence him.

In this motion, Roberts challenges the trial court’s jurisdiction to resentence him. 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. Nor was the motion reviewable as a motion to withdraw a guilty or no-contest plea under Crim.R. 32.1 or a motion for a new trial under Crim.R. 33. 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. And Crim.R. 57(B) did not require the common pleas court to entertain the motion under Civ.R. 60(B), because Roberts’s conviction was reviewable, and in fact, reviewed, under the procedures provided for a direct appeal.

Nor could the common pleas court have granted relief 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. The alleged error, even if demonstrated, would not have rendered Roberts’s conviction void, because the trial court had personal jurisdiction by virtue of Roberts’s indictment for a felony offense and subject-matter jurisdiction to convict him of that offense. *See State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 4-6 and 41 (“realign[ing]” the court’s void-versus-voidable jurisprudence with the “traditional” rule that a judgment of conviction is voidable, not void, if entered by a court having personal and subject-matter jurisdiction).

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Moreover, this court has no jurisdiction to review the common pleas court's 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 judgment overruling Roberts's motion is not a judgment of conviction. Therefore, the judgment overruling the motion is plainly not reviewable under the jurisdiction conferred upon an appeals court by R.C. 2953.02 or 2953.08 to review a judgment of conviction entered in a criminal case.

The judgment overruling Roberts's motion was not reviewable by this court under R.C. 2505.03(A) as a "final order." The entry was not "made" in any "special" statutory proceeding. *See* R.C. 2505.02(B)(2). Nor can the judgment be said to have effectively determined or prevented a judgment in any proceeding, when the motion was not filed in any action, or in any proceeding ancillary to an action, then pending before the common pleas court. *See* R.C. 2505.02(B)(1) and (B)(4)(a).

Because the trial court had no jurisdiction to entertain the petition, the petition was subject to dismissal without an evidentiary hearing. *See* R.C. 2953.21(D) and 2953.23(A). We, therefore, modify the court's judgment denying the petition to reflect its dismissal, *see* App.R. 12(A)(1)(a), and dismiss the appeal.

A certified copy of this judgment entry constitutes 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., WINKLER and BOCK, JJ.

To the clerk:

Enter upon the journal of the court on December 29, 2021,
per order of the court_____.

Administrative Judge