

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

STATE OF OHIO,	:	APPEAL NO. C-190757
Plaintiff-Appellee,	:	TRIAL NO. B-0506290
vs.	:	<i>JUDGMENT ENTRY.</i>
JOSHUA FIKES,	:	
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 Joshua Fikes appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion for Relief from Judgment.” We dismiss the appeal for lack of jurisdiction.

Fikes was convicted in 2006 of murder and having weapons while under a disability. We affirmed his convictions on direct appeal. *State v. Fikes*, 1st Dist. Hamilton No. C-060581, 2007-Ohio-5870, *appeal not accepted*, 117 Ohio St.3d 1426, 2008-Ohio-969, 882 N.E.2d 446.

In 2015, Fikes moved under Crim.R. 33 and R.C. 2945.79(D) for a new trial and for leave to move for a new trial. The common pleas court overruled those motions, and we affirmed that judgment. *State v. Fikes*, 1st Dist. Hamilton No. C-150538 (Mar. 24, 2017), *appeals not accepted*, 150 Ohio St.3d 1432, 2017-Ohio-7567, 81 N.E.3d 1272.

In 2017, Fikes filed with the common pleas court the “Motion for Relief from Judgment” from which this appeal derives. In that motion, he sought relief from the

common pleas court's judgment overruling his new-trial motions, based on alleged deficiencies in this court's decision affirming that judgment.

In this appeal, Fikes presents nine assignments of error that may fairly be read together to challenge the overruling of his "Motion for Relief from Judgment." We do not reach the merits of that challenge, because we have no jurisdiction to entertain this appeal.

In his "Motion for Relief from Judgment," Fikes sought relief under Civ.R. 60(B) and Crim.R. 57(B). Civ.R. 60(B) governs the proceedings upon a motion for relief from a judgment entered in a civil action, and Crim.R. 57(B) permits a court in a criminal matter to "look to the rules of civil procedure * * * if no rule of criminal procedure exists." But Crim.R. 57(B) did not operate to permit Fikes to seek relief under Civ.R. 60(B) from the common pleas court's judgment overruling his new-trial motions, because procedures "exist[ed]" for appealing that judgment, and Fikes availed himself of those procedures. *See Fikes*, 1st Dist. Hamilton No. C-150538.

Fikes failed to designate in his "Motion for Relief from Judgment" a statute or rule under which the relief sought might have been afforded. Thus, the common pleas court was left to "recast" that motion "into whatever category necessary to identify and establish the criteria by which the motion should be judged." *See State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12 and syllabus.

But the relief sought in the "Motion for Relief from Judgment" could not have been afforded under any postconviction procedure provided by statute or rule. The motion was not 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, because the motion did not seek relief based on a constitutional violation during the proceedings leading to Fikes's convictions. *See State v. Powell*, 90 Ohio App.3d 260,

264, 629 N.E.2d 13 (1st Dist.1993) (citing R.C. 2953.21(A)(1) to hold that “the violation upon which [a postconviction] petitioner relies to establish his right to relief must be of constitutional dimension, and it must have occurred at the time the petitioner was tried and convicted of a criminal offense”). The motion was not reviewable as a motion to withdraw a guilty or no-contest plea under Crim.R. 32.1 or as a motion for a new trial under Crim.R. 33, because Fikes was convicted following a jury trial, and the motion sought, not a new trial, but relief from the judgment overruling his new-trial motions. And 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.

Nor could the common pleas court have granted the relief sought in the “Motion for Relief from Judgment” 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 (holding that a court always has jurisdiction to correct a void judgment). Because the judgment overruling the new-trial motions was entered by a court acting with personal and subject-matter jurisdiction, it was not void. *See State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 4-6 and 41 (holding that a judgment is voidable, not void, if it is entered by a court with personal and subject-matter jurisdiction).

Moreover, this court has no jurisdiction to review the common pleas court’s judgment overruling the “Motion for Relief from Judgment.” An intermediate appellate court has 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.” Article IV, Section 3(B)(2), Ohio Constitution. The

judgment overruling the “Motion for Relief from Judgment” is plainly not reviewable under this court’s jurisdiction under R.C. 2953.02 or 2953.08 to review a judgment of conviction entered in a criminal case. Also, the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain the motion and thus do not confer upon this court jurisdiction to review the judgment overruling the motion. *See* R.C. 2953.23(B). Finally, the judgment overruling the “Motion for Relief from Judgment” 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 judgment was not entered in a special statutory proceeding. *See* R.C. 2505.02(B)(2) and (A)(2). And because the common pleas court had no jurisdiction to entertain the motion, the entry overruling the motion did not have the effect of determining an “action” or of 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).

This court has no jurisdiction to review the common pleas court’s judgment overruling Fikes’s “Motion for Relief from 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.

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

To the clerk:

Enter upon the journal of the court on March 26, 2021,
per order of the court _____.
Administrative Judge