

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

STATE OF OHIO,	:	APPEAL NO. C-190496
Plaintiff-Appellee,	:	TRIAL NO. B-0804934-B
vs.	:	<i>JUDGMENT ENTRY.</i>
JOVON DAVIS,	:	
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 Jovon Davis presents on appeal a single assignment of error challenging the Hamilton County Common Pleas Court’s judgment overruling his “Motion for Resentencing Based on Void and Non-Final Appealable Order.” Because the common pleas court had no jurisdiction to entertain the motion, we affirm the court’s judgment as modified to dismiss the motion.

Davis was convicted in 2009 upon jury verdicts finding him guilty of murder and aggravated robbery. The trial court imposed consecutive prison terms totaling 24 years to life and a mandatory five-year period of postrelease control. The court, at the sentencing hearing, also ordered Davis to pay court costs, but then stated in the judgment of conviction, “Costs remitted.” Those convictions were affirmed on direct appeal. *State v. Davis*, 1st Dist. Hamilton No. C-090220, 2010-Ohio-5125, *appeal not allowed*, 128 Ohio St.3d 1413, 2011-Ohio-828, 942 N.E.2d 385.

In 2019, Davis filed with the common pleas court his “Motion for Resentencing Based on Void and Non-Final Appealable Order.” In that motion, he sought a new sentencing hearing on two grounds. He asserted that the trial court had violated the postrelease-control statutes and denied the Crim.R. 43(A) right to be present at

sentencing, when it misinformed him at sentencing about the consequences of violating postrelease control. And he asserted that the trial court had failed to “properly wa[i]ve court cost[s]” in the judgment of conviction.

Davis did not designate in his motion a statute or rule under which the relief sought might have been afforded. Therefore, the common pleas court was left 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 common pleas court could not have afforded that 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. A judgment of conviction is voidable, not void, if entered by a court having personal and subject-matter jurisdiction. *State v. Harper*, Slip Opinion No. 2020-Ohio-2913, ¶ 4. The trial court had personal jurisdiction by virtue of Davis’s appearance before the court under indictment on felony charges. And the court acted within its subject-matter jurisdiction in sentencing him for those offenses. Thus, the statutory and constitutional violations alleged in the motion, even if demonstrated, would not have rendered Davis’s convictions void. *See id.* at ¶ 5 and 41.

Relief from a conviction may be afforded under R.C. 2953.21 et seq., governing the proceedings upon a petition for postconviction relief, when “the violation upon which the petitioner relies to establish his right to relief [is] of constitutional dimension, and * * * occurred at the time the petitioner was tried and convicted of a criminal offense.” *State v. Powell*, 90 Ohio App.3d 260, 264, 629 N.E.2d 13 (1st Dist.1993) (citing R.C. 2953.21(A)(1)). Thus, Davis’s statutory postrelease-control and court-costs challenges were not reviewable by the common pleas court under the postconviction statutes. But the due-process protections afforded by the Fifth and Fourteenth Amendments to the United States 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. *State v. Williams*, 6 Ohio St.3d 281, 286, 452 N.E.2d 1323 (1983). Thus, Davis’s challenge in his motion alleging a violation of his constitutional right to be present at sentencing was reviewable under the postconviction

statutes. But the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain that challenge, because Davis 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 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 could the common pleas court have granted the relief sought in the motion under any other postconviction procedure provided by statute or rule. The claims were not reviewable under Crim.R. 32.1, governing motions to withdraw guilty or no-contest pleas, or under Crim.R. 33, governing motions for a new trial, when Davis had been convicted following a trial, and the motion did not seek a new trial. The claims were 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 claims were not reviewable under Civ.R. 60(B), upon the authority of Crim.R. 57(B), because Davis’s convictions were reviewable and had, in fact, been reviewed under the procedures provided for a direct appeal.

Because the common pleas court had no jurisdiction to entertain Davis’s “Motion for Resentencing Based on Void and Non-Final Appealable Order,” 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.

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

To the clerk:

Enter upon the journal of the court on October 7, 2020,
per order of the court_____.

Presiding Judge