

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

STATE OF OHIO,	:	APPEAL NO. C-160652
Plaintiff-Appellee,	:	TRIAL NOS. B-0500271-A
vs.	:	B-0411795
CLIFFORD MCNEAL,	:	<i>JUDGMENT ENTRY.</i>
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 Clifford McNeal appeals from the Hamilton County Common Pleas Court’s judgment denying his “Motion to Correct Sentencing Error Unauthorized by Operation of Law Pursuant to R.C. 2929.14(D)(1)(b).” We dismiss the appeal for lack of jurisdiction.

In 2005, McNeal was convicted in the case numbered B-0411795 upon guilty pleas to two counts of aggravated robbery. Each offense carried a firearm specification. The trial court imposed jointly recommended concurrent prison terms of two years for each aggravated robbery and consecutive prison terms of three years for each specification. McNeal was also convicted in the case numbered B-0500271-A upon guilty pleas to three counts of robbery and two counts of felonious assault, along with the firearm specifications accompanying two of the three robbery counts and one of the two felonious-assault counts. The trial court imposed jointly recommended concurrent prison terms of two years for each offense and consecutive prison terms of three years

for each specification. The court further ordered that the prison terms for each offense be served concurrently with, and that the prison terms for each specification be served consecutively to, the prison terms for the offenses and the specifications in the case numbered B-0411795 and in a case unrelated to this appeal, numbered B-0412041, for an aggregate prison sentence of 25 years. On direct appeal, we affirmed McNeal's convictions in the three cases. *State v. McNeal*, 1st Dist. Hamilton No. C-050906 (Dec. 13, 2006).

In 2015, McNeal challenged the trial court's failure to merge the sentences imposed on the firearm specifications in the cases numbered B-0500271-A and B-0411795 by filing with the common pleas court his "Motion to Correct Sentencing Error Unauthorized by Operation of Law Pursuant to R.C. 2929.14(D)(1)(b)." In his motion, he argued that the trial court, in imposing consecutive sentences on the specifications, had exceeded the authority conferred by former R.C. 2929.14(D)(1)(b) (now R.C. 2929.14(B)(1)(b)), because his offenses had been committed as part of the same transaction. In this appeal, he presents a single assignment of error, contending that the common pleas court erred in overruling the motion. We do not reach the merits of the assignment of error, because we have no jurisdiction to review the court's judgment overruling the motion.

A court of appeals 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 common pleas court's judgment overruling McNeal's motion seeking merger of his firearm specifications is 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. Nor was the judgment overruling the motion reviewable under our jurisdiction

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under R.C. 2953.23(B) to review an order denying a petition under R.C. 2953.21 et seq. for postconviction relief, because the motion was not reviewable by the common pleas court as a postconviction petition, when it sought relief based on a statutory, rather than a constitutional, violation. *See* R.C. 2953.21(A)(1)(a). The judgment overruling the motion was not reviewable under our jurisdiction under R.C. 2505.03(A) to review a “final order, judgment or decree,” because the judgment neither was entered in a special statutory proceeding, nor effectively determined or prevented a judgment in any proceeding then pending before the common pleas court. *See* R.C. 2505.02(B)(1), (B)(2), and (B)(4)(a). Finally, McNeal’s sentences were 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, when his merger claim, even if demonstrated, would not have rendered his sentences void. *See State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 3 (holding that a merger challenge may be forfeited).

Because we have no jurisdiction to review the common pleas court’s judgment overruling McNeal’s motion, we dismiss this appeal.

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., MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on December 22, 2017

per order of the court_____.

Presiding Judge