

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

STATE OF OHIO,	:	APPEAL NO. C-180645
	:	TRIAL NO. B-060007
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
CHRISTOPHER SMITH,	:	
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 Smith presents on appeal a single assignment of error challenging the Hamilton County Common Pleas Court’s judgment overruling his 2018 “Motion to Correct Void Sentence and/or Judgment.” We affirm the court’s judgment as modified to dismiss the motion for lack of jurisdiction.

Smith was convicted in 2006 upon no-contest pleas to two counts of attempted murder, three counts of felonious assault, two counts of aggravated robbery, two counts of robbery, and single counts of carrying a concealed weapon and having weapons while under a disability. In the direct appeal, we remanded for resentencing in conformity with the multiple-counts statute, R.C. 2941.25. *State v. Smith*, 1st Dist. Hamilton No. C-060991, 2008-Ohio-2561, *appeal not allowed*, 120 Ohio St.3d 1416, 2008-Ohio-6166, 897 N.E.2d 652. He was resentenced in 2009 on two counts of attempted murder, two counts of felonious assault, and single counts of aggravated robbery, robbery, carrying a concealed weapon, and having weapons while under a disability. The trial court imposed for those offenses prison terms totaling 64 years and included in the judgment of

conviction a mandatory five-year term of postrelease-control supervision. From the 2009 judgment of conviction, Smith took no direct appeal.

Smith challenged his convictions in postconviction motions filed in 2006, 2007, 2013, and 2017. *See State v. Smith*, 1st Dist. Hamilton No. C-070624, 2008-Ohio-3789; *State v. Smith*, 1st Dist. Hamilton No. C-140421 (May 1, 2015), *appeal not accepted*, 143 Ohio St.3d 1440, 2015-Ohio-3427, 36 N.E.3d 188; *State v. Smith*, 1st Dist. Hamilton No. C-170431 (Sept. 28, 2018). In September 2019, we reversed the judgment overruling his 2017 Crim.R. 32.1 motion to withdraw his no-contest pleas and remanded for an evidentiary hearing on the motion. *State v. Smith*, 1st Dist. Hamilton No. C-180081 (Sept. 11, 2019). That matter remains pending before the common pleas court.

Smith had, in 2018, filed with the common pleas court the “Motion to Correct Void Sentence and/or Judgment” from which this appeal derives. In that motion, he sought resentencing on the ground that his sentences were void because they had not been imposed in conformity with the statutory mandates concerning postrelease control.

Smith 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. But no statute or rule conferred upon the court jurisdiction to afford the relief sought. *See State v. Dardinger*, 1st Dist. Hamilton No. C-160467, 2017-Ohio-1525, ¶ 8-9.

When postrelease control is not properly imposed, that portion of the sentence is void and subject to correction at any time. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, paragraph one of the syllabus and ¶ 27. But Smith’s postrelease control was not subject to correction under the jurisdiction to correct a void judgment, because the record does not demonstrate the alleged deficiencies in the imposition of postrelease control. *See State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 18-19.

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When Smith was resentenced in 2009, the trial court properly incorporated into the judgment of conviction the five-year term of postrelease control mandated for his first-degree-felony offenses. See former R.C. 2929.14(F)(1), 2929.19(B)(3)(c), and 2967.28(B) (superseded on September 30, 2011, and currently governed by R.C. 2929.14(D)(1), 2929.19(B)(2)(d), and 2967.28(B)). Because the periods of postrelease control imposed for his offenses must be served concurrently, any error in imposing a lesser postrelease-control term was harmless. See *Durain v. Sheldon*, 122 Ohio St.3d 582, 2009-Ohio-4082, 913 N.E.2d 442, citing R.C. 2967.28(F)(4)(c); *State v. Buckner*, 1st Dist. Hamilton No. C-100666, 2011-Ohio-4358, ¶ 16-18; see also *State v. Hamby*, 2d Dist. Montgomery No. 24328, 2011-Ohio-4542, ¶ 32-38 (questioning, but following, *Durain's* reading of R.C. 2967.28(F)(4)(c)). And the record cannot be said to demonstrate the alleged deficiencies in the postrelease-control notification required at the resentencing hearing, because the record does not include a transcript of the proceedings at that hearing, conforming with the requirements of App.R. 9(B). See *Smith*, 1st Dist. Hamilton No. C-170431.

Because the common pleas court had no jurisdiction to entertain Smith's "Motion to Correct Void Sentence and/or Judgment," the motion was subject to dismissal. Accordingly, we modify the judgment appealed to reflect the dismissal of the motion. See App.R. 12(A)(1)(a). And we affirm the judgment as modified.

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.

**MOCK, P.J., ZAYAS and CROUSE, JJ.**

To the clerk:

Enter upon the journal of the court on October 2, 2019,  
per order of the court\_\_\_\_\_.

Presiding Judge