

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

STATE OF OHIO,	:	APPEAL NO. C-080956
Plaintiff-Appellee,	:	TRIAL NO. B-0508457
vs.	:	<i>JUDGMENT ENTRY.</i>
CAMERON MCGLOTHIN,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant Cameron McGlothlin presents on appeal three assignments of error that together challenge the common pleas court’s judgment denying the relief sought in his “Motion to Vacate and Set Aside Unmerged Judgments of Conviction and Sentence Imposed Without Jurisdiction.” We overrule the assignments of error because the court had no jurisdiction to entertain the motion.

In 2006, McGlothlin was convicted of murder, having a weapon under a disability, aggravated robbery, and robbery. He unsuccessfully challenged his convictions in appeals to this court and to the Ohio Supreme Court.<sup>2</sup>

In July 2008, he filed with the common pleas court a “Motion to Vacate and Set Aside Unmerged Judgments of Conviction and Sentence Imposed Without

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>2</sup> See *State v. McGlothlin*, 1st Dist. No. C-060145, 2007-Ohio-4707, appeals not accepted for review, 116 Ohio St.3d 1480, 2008-Ohio-153, 879 N.E.2d 786, and 117 Ohio St.3d 1441, 2008-Ohio-1279, 883 N.E.2d 458.

Jurisdiction.” In his motion, he cited the Ohio Supreme Court’s 2008 decision in *State v. Colon*<sup>3</sup> in support of his challenge to the omission of the mens rea elements from the aggravated-robbery and robbery counts of his indictment. And he cited the supreme court’s 2008 decision in *State v. Cabrales*<sup>4</sup> in support of his challenge, under R.C. 2941.25, to the separate prison terms imposed for aggravated robbery and robbery. The court overruled the motion, and this appeal followed.

We note at the outset that McGlothlin had also applied under App.R. 26(B) to reopen his direct appeal on the grounds that his appellate counsel had been ineffective in failing to challenge his aggravated-robbery and robbery convictions under *Colon* and under *Cabrales*. By entry dated October 8, 2009, we denied reopening on his *Colon* claim, but reopened the appeal on his *Cabrales* claim.

Nevertheless, we here conclude that the common pleas court properly declined to entertain, because it had no jurisdiction to entertain, McGlothlin’s *Colon* and *Cabrales* claims as presented in his “Motion to Vacate and Set Aside Unmerged Judgments of Conviction and Sentence Imposed Without Jurisdiction.”

His direct appeal from his judgment of conviction had divested the trial court of jurisdiction over his case, except to act in aid of the appeal or in a manner not inconsistent with our jurisdiction.<sup>5</sup> And because we did not remand the case, the trial court did not regain jurisdiction after we had decided the appeal.<sup>6</sup>

The postconviction statutes provide “the exclusive remedy by which a person may bring a collateral challenge to the validity of a conviction or sentence in a

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<sup>3</sup> 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917.

<sup>4</sup> 118 Ohio St.3d 54, 2008-Ohio-1625, 886 N.E.2d 181.

<sup>5</sup> *In re Kurtzhalz* (1943), 141 Ohio St. 432, 48 N.E.2d 657, paragraph two of the syllabus; accord *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207; *State ex rel. Special Prosecutors v. Judges* (1978), 55 Ohio St.2d 94, 97, 378 N.E.2d 162.

<sup>6</sup> See *State ex rel. Special Prosecutors*, 55 Ohio St.2d at 97.

criminal case.”<sup>7</sup> Thus, the common pleas court properly recast McGlothin’s motion as a petition for postconviction relief, reviewable under the standards provided by R.C. 2953.21 et seq.<sup>8</sup> But R.C. 2953.21 et seq. did not confer jurisdiction on the common pleas court to entertain McGlothin’s postconviction petition because he failed to satisfy either the time restrictions of R.C. 2953.21(A)(2) or the jurisdictional requirements of R.C. 2953.23.

Finally, a trial court retains jurisdiction to correct a void judgment.<sup>9</sup> But the supreme court has not held that either a *Colon* error, absent structural error, or a *Cabrales* error renders a judgment of conviction void.<sup>10</sup>

We, therefore, hold that the common pleas court properly overruled McGlothin’s “Motion to Vacate and Set Aside Unmerged Judgments of Conviction and Sentence Imposed Without Jurisdiction.” Accordingly, we affirm the court’s judgment.

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.

**HENDON, P.J., SUNDERMANN and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on October 28, 2009

per order of the Court \_\_\_\_\_  
Presiding Judge

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<sup>7</sup> R.C. 2953.21(J).

<sup>8</sup> See *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶12.

<sup>9</sup> See *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶18-19.

<sup>10</sup> See *State v. Morgan*, 181 Ohio App.3d 747, 2009-Ohio-1370, 910 N.E.2d 1075, ¶33 (overruling *State v. Shugars*, 165 Ohio App.3d 379, 2006-Ohio-718, 846 N.E.2d 592, to the extent of its holding that a defective indictment deprives a trial court of jurisdiction). Cf. *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶12 (holding that a sentence imposed without proper postrelease-control notification is void).