

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

STATE OF OHIO,	:	APPEAL NO. C-150662
Plaintiff-Appellee,	:	TRIAL NO. B-0907138
vs.	:	<i>JUDGMENT ENTRY.</i>
RICHARD HYDEN,	:	
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 Richard Hyden appeals the Hamilton County Common Pleas Court’s judgment overruling his postconviction “Motion for Re-Sentencing Based on Void Judgment.” Because the common pleas court had no jurisdiction to grant the relief sought in that motion, we affirm the court’s judgment as modified to dismiss the motion.

Hyden was convicted in 2010 upon guilty pleas to five counts of rape. He unsuccessfully challenged his convictions on direct appeal and in postconviction motions filed in 2010 and 2015. *See State v. Hyden*, 1st Dist. Hamilton Nos. C-100483 and C-100532 (July 29, 2011). In this appeal from the overruling of his 2015 “Motion for Re-Sentencing Based on Void Judgment,” he advances three assignments of error.

We do not reach the merits of Hyden’s third assignment of error, contending that he was denied due process and his right to appeal when the trial court, after overruling his 2015 motion, “locked [his] files.” This court has jurisdiction to review only the

judgment from which Hyden appeals. That judgment overruled his 2015 motion; it did not order, nor can it be said to have caused, “his files” to be “locked.” Accordingly, this court has no jurisdiction to review the third assignment of error. *See State v. Gipson*, 1st Dist. Hamilton Nos. C-960867 and C-960881, 1997 WL 598397 (Sept. 26, 1997).

In his first and second assignments of error, Hyden contends that he was not sentenced in conformity with the statutory mandates concerning postrelease control, because the trial court failed, with respect to each rape offense, to notify him at sentencing and to incorporate into the judgment of conviction a mandatory five-year term of postrelease control. We address the assignments of error together, because they essentially restate the grounds for relief advanced in Hyden’s motion and thus may fairly be read to challenge the denial of the relief sought in the motion on those grounds. We overrule the assignments of error, because the common pleas court lacked jurisdiction to grant that relief.

Because Hyden did not designate in his motion a statute or rule under which the relief sought might have been afforded, the common pleas court was free to “recast” his 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 Hyden the postconviction relief sought in his motion. *See State v. Dardinger*, 1st Dist. Hamilton No. C-160467, 2017-Ohio-1525, ¶ 8-9.

A court always has 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. And when postrelease control is not properly imposed, that portion of the sentence is void. *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, paragraph one of the syllabus and ¶ 27. But the postrelease-control portions of Hyden’s sentences were

not void, because in sentencing him for his first-degree-felony rapes, the trial court fully complied with the statutory mandates concerning postrelease control. *See* former R.C. 2929.14(F)(1), 2929.19(B)(3)(c) through (e), and 2967.28(B) (superseded on September 30, 2011, by R.C. 2929.14(D)(1), 2929.19(B)(2)(c) through (e), and 2967.28(B)). The court notified him at the hearing that he “will automatically,” and stated in the judgment of conviction that he “shall,” be subject to postrelease-control supervision for five years following his release from prison. *See Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 271 N.E.2d 834 (1971) (holding that “the word ‘may’ shall be construed as permissive and the word ‘shall’ shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage”). And because the periods of postrelease control imposed for Hyden’s five rape offenses must be served concurrently, *see* R.C. 2967.28(F)(4)(c), any error in failing to provide postrelease-control notification with respect to each offense was harmless. *See State v. Buckner*, 1st Dist. Hamilton No. C-100666, 2011-Ohio-4358, ¶ 16-18.

The common pleas court had no jurisdiction to entertain Hyden’s motion. The motion was, therefore, 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 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., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on April 11, 2018
per order of the court _____.

Presiding Judge