

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

STATE OF OHIO,	:	APPEAL NO. C-170353
Plaintiff-Appellee,	:	TRIAL NO. B-0499010
vs.	:	<i>JUDGMENT ENTRY.</i>
JOHN W. 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 John W. Davis presents on appeal a single assignment of error challenging the Hamilton County Common Pleas Court’s judgment overruling his 2017 “Motion for Jail-Time Credit for Days Held in Confinement While Awaiting Return to Ohio as a Parole Violator.” We affirm the court’s judgment as modified to dismiss the motion for lack of jurisdiction.

In his motion, Davis sought jail-time credit against his 1972 sentence for rape, for the days spent in a long-term nursing facility in 2006 and 2007. The common pleas court did not have jurisdiction to entertain the motion under the “continuing jurisdiction” conferred by R.C. 2929.19(B)(2)(g)(iii) to correct a jail-time-credit error, because Davis had been sentenced before the 2012 effective date of R.C. 2929.19(B)(2)(g). *See State v. Morgan*, 1st Dist. Hamilton No. C-140146, 2014-Ohio-

5325, ¶ 5–7. Nor was his jail-time credit correctable by the court under Crim.R. 36, because the error alleged in calculating the credit was one of law, not fact. *See State v. Weaver*, 1st Dist. Hamilton No. C-050923, 2006-Ohio-5072, ¶ 16.

“The practice of awarding jail-time credit” is “root[ed]” in the equal-protection guarantees of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Ohio Constitution. *State v. Fugate*, 117 Ohio St.3d 261, 2008-Ohio-856, 883 N.E.2d 440, ¶ 7. Because the jail-time-credit error alleged in Davis’s motion was constitutional in dimension, the motion was reviewable by the common pleas court under the standards provided by R.C. 2953.21 et seq., governing the proceedings upon a petition for postconviction relief. *See* R.C. 2953.21(A)(1); *State v. Powell*, 90 Ohio App.3d 260, 264, 629 N.E.2d 13 (1st Dist.1993); *see also State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12 and syllabus (permitting an “irregular” postconviction motion to be “recast * * * into whatever category necessary to identify and establish the criteria by which the motion should be judged”). But the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain the motion, because Davis failed to satisfy the time restrictions of R.C. 2953.21(A)(2) or the jurisdictional requirements of R.C. 2953.23(A)(1).

Finally, the relief sought in Davis’s motion could not have been granted under the court’s 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. The alleged jail-time-credit error, even if demonstrated, would not have rendered his sentence void. *See State v. Roberts*, 1st Dist. Hamilton No. C-150528, 2017-Ohio-1060, ¶ 10.

The common pleas court had no jurisdiction to entertain Davis’s motion for jail-time credit. Therefore, the motion was subject to dismissal. *See* R.C. 2953.21(C) and

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2953.23(A). 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.

MOCK, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on August 3, 2018
per order of the court _____.
Presiding Judge