

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

STATE OF OHIO,	:	APPEAL NO. C-170665
Plaintiff-Appellee,	:	TRIAL NO. B-9704985
vs.	:	<i>JUDGMENT ENTRY.</i>
NIAROBİ TEASLEY,	:	
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 Niarobi Teasley presents on appeal three assignments of error, challenging the Hamilton County Common Pleas Court’s judgment overruling his 2017 “Motion to Vacate Nunc Pro Tunc Judgment Entry Dated[] January 29, 1999.” The assignments of error essentially restate claims advanced in the motion and may thus be read together to challenge the overruling of the motion. Because the court had no jurisdiction to grant the relief sought in the motion, we overrule the assignments of error and affirm the court’s judgment as modified to dismiss the motion.

In December 1997, a jury returned verdicts finding Teasley guilty of aggravated murder and two firearm specifications, and the trial court sentenced him to prison terms of life without parole for 20 years for the aggravated murder, “plus 3 years consecutive on the gun specification.” In January 1999, the trial court entered a corrected judgment of conviction, nunc pro tunc to December 22, 1997, memorializing Teasley’s not-guilty

plea, the jury's guilty verdicts, his aggravated-murder sentence, his three-year sentence for firearm specification 1, and the "merge[r]" of firearm specification 2 with firearm specification 1. He unsuccessfully challenged his conviction on direct appeal and in his 1999 petition pursuant to R.C. 2953.21 et seq. for postconviction relief. *State v. Teasley*, 1st Dist. Hamilton No. C-980041, 1999 WL 252473 (Apr. 30, 1999), *appeal not allowed*, 86 Ohio St.3d 1463, 715 N.E.2d 566 (1999); *State v. Teasley*, 1st Dist. Hamilton No. C-990722 (Aug. 30, 2000).

In his 2017 "Motion to Vacate Nunc Pro Tunc Judgment Entry Dated[] January 29, 1999," Teasley asserted that the trial court, with its 1999 nunc pro tunc judgment, "add[ed] an additional firearm specification that was not mentioned at [his 1997] sentencing hearing," failed to satisfy the Crim.R. 32(C) requirements for a judgment of conviction, exceeded its authority under Crim.R. 36 to correct a clerical error in a judgment, and denied him his right under Crim.R. 43(A) to be present at sentencing. He did not specify in his motion a statute or rule under which the relief sought may be 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.

Teasley's Crim.R. 43(A) claim was reviewable by the common pleas court as a postconviction petition under R.C. 2953.21 et seq. The postconviction statutes afford relief from a conviction upon proof of a constitutional violation during the proceedings resulting in that conviction. R.C. 2953.21(A)(1)(a). And Crim.R. 43(A) effectuates an accused's fundamental right, secured under the Fifth Amendment to the United States Constitution and Article I, Section 10, of the Ohio Constitution, to be present at all critical stages of a criminal proceeding. *State v. Williams*, 6 Ohio St.3d 281, 285-286,

452 N.E.2d 1323 (1983). But the postconviction statutes did not confer upon the court jurisdiction to entertain that claim, because Teasley filed his motion well after the time prescribed by R.C. 2953.21(A)(2) had expired, and he failed to satisfy the jurisdictional requirements for entertaining a late postconviction claim, when the record does not, as it could not, demonstrate that, but for the claimed constitutional violation, “no reasonable factfinder would have found [him] guilty of the offense of which [he] was convicted.” See R.C. 2953.23(A)(1)(b).

Teasley’s Crim.R. 32(C) and 36 claims were not reviewable by the common pleas court under the standards provided by the postconviction statutes, because those claims sought relief based not upon alleged constitutional deprivations, but upon alleged criminal-rule violations. Nor could the court have granted the relief sought in those claims under any other postconviction procedure provided by statute or the criminal rules. See *State v. Roberts*, 1st Dist. Hamilton No. C-150528, 2017-Ohio-1060, ¶ 9.

Finally, the common pleas court could not have granted Teasley relief under its 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. A judgment of conviction is void only to the extent that a sentence is unauthorized by statute or does not include a statutorily mandated term, or if the trial court lacks subject-matter jurisdiction or the authority to act. See *State v. Wurzelbacher*, 1st Dist. Hamilton No. C-130011, 2013-Ohio-4009, ¶ 8; *State v. Grant*, 1st Dist. Hamilton No. C-120695, 2013-Ohio-3421, ¶ 9-16. See also *Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 14-15 (noting the “traditional[]” rule that, except with certain sentencing errors, a judgment is not void unless “a court acts without subject-matter jurisdiction”). The alleged violation of Teasley’s right to be present at sentencing, even if demonstrated, would not

have rendered his conviction void. *See Williams* at ¶ 287 (holding that the constitutional right to be present during critical stages of a criminal proceeding may be waived). Moreover, the trial court, with its 1999 nunc pro tunc entry, neither resentenced Teasley nor “add[ed] an additional firearm specification.” The court instead properly exercised its authority under Crim.R. 36 to correct clerical errors in the 1997 judgment of conviction to comply with the requirements of Crim.R. 32(C) and to clarify that, for purposes of sentencing on the firearm specifications, specification 2 had “merge[d]” with specification 1. *See State v. Evans*, 1st Dist. Hamilton No. C-140504, 2015-Ohio-3208, ¶ 12 (holding that the misstatement in the judgment of conviction of the sum of defendant’s prison sentences constituted a clerical error subject to correction under Crim.R. 36).

Because the common pleas court had no jurisdiction to entertain Teasley’s “Motion to Vacate Nunc Pro Tunc Judgment Entry Dated[] January 29, 1999,” the motion was 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.

**CUNNINGHAM, P.J., ZAYAS and MILLER, JJ.**

To the clerk:

Enter upon the journal of the court on November 30, 2018

per order of the court \_\_\_\_\_.

Presiding Judge