

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

STATE OF OHIO,	:	APPEAL NO. C-180199
Plaintiff-Appellee,	:	TRIAL NO. B-1204674
vs.	:	<i>JUDGMENT ENTRY.</i>
IAN MILLER,	:	
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 Ian Miller appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Correct Void Sentence, or Judgment.” We affirm the court’s judgment as modified.

In 2014, following a jury trial, Miller was convicted of murder in violation of R.C. 2903.02(B). We affirmed that conviction on direct appeal. *State v. Miller*, 1st Dist. Hamilton No. C-140101 (May 22, 2015).

In 2018, Miller filed with the common pleas court his “Motion to Correct Void Sentence, or Judgment,” seeking correction of his sentence on the ground that the trial court had failed to comply with the statutory requirements concerning postrelease control. In this appeal from the overruling of that motion, Miller presents a single assignment of error that essentially restates the ground for relief advanced in the motion and thus may fairly be read to challenge the denial of relief on that ground. We overrule the assignment of error, because the common pleas court had no jurisdiction to entertain the motion.

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The motion did not specify 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 the motion was not reviewable under any postconviction procedure provided by statute or the criminal rules. *See State v. Dardinger*, 1st Dist. Hamilton No. C-160467, 2017-Ohio-1525, ¶ 8-9; *accord State v. Wallace*, 1st Dist. Hamilton No. C-160788, 2018-Ohio-1129.

Nor was Miller’s sentence subject to correction under the jurisdiction to correct a void judgment. *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 18-19. When postrelease control is not properly imposed, that part of the sentence is void and subject to review and 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 the trial court’s failure to include in Miller’s sentence a term of postrelease control did not render his sentence void, because the postrelease-control statutes do not apply to the unclassified felony of murder. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 36; *accord State v. Baker*, 1st Dist. Hamilton No. C-050791, 2006-Ohio-4902, ¶ 4-6.

Because the common pleas court had no jurisdiction to entertain Miller’s “Motion to Correct Void Sentence, or Judgment,” 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.

MOCK, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on June 14, 2019,

per order of the court _____.

Presiding Judge