

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
CLINTON COUNTY

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, : CASE NO. CA2007-04-021  
 :  
 - vs - : OPINION  
 : 9/24/2007  
 :  
 CHARLES WILLIAM CARTER, :  
 :  
 Defendant-Appellant. :

CRIMINAL APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS  
Case No. CRI 2001-5100

William E. Peelle, Clinton County Prosecuting Attorney, Deborah S. Quigley, 103 East Main Street, Wilmington, Ohio 45177, for plaintiff-appellee

Charles William Carter, #419-712, Ross Correctional Institution, P.O. Box 7010, Chillicothe, Ohio 45601-7010, defendant-appellant, pro se

**WALSH, J.**

{¶1} Defendant-appellant, Charles William Carter, appeals the denial of his motion for modification of sentence.

{¶2} The procedural posture of this case is well known to the court. In 2002, appellant was sentenced to an aggregate term of 20 years in prison after he pled no contest to, and was found guilty of, multiple felony offenses. Appellant's convictions and sentence were affirmed on direct appeal, as was the denial of his March 17, 2006 motion to modify

sentence. See *State v. Carter*, Clinton App. No. CA2002-02-012, 2002-Ohio-6108; and *State v. Carter*, Clinton App. No. CA2006-03-010, 2006-Ohio-4205. Appellant's most recent motion, which is very similar to the one denied in 2006, seeks to modify his sentence pursuant to the United States Supreme Court's recent decision in *Cunningham v. California* (2007), \_\_\_ U.S. \_\_\_, 127 S.Ct. 856. The trial court denied the motion, prompting this appeal in which appellant presents a single assignment of error claiming his constitutional right to a jury trial was violated when the trial court denied his motion to modify sentence.

{¶3} As this court has previously held, motions to modify or correct a criminal sentence based upon an alleged violation of constitutional rights can only be properly construed as petitions for postconviction relief. See *Carter*, 2006-Ohio-4205 at ¶9. Such a petition not filed within the 180-day time period in R.C. 2953.21(A)(2) and only raising issues relating to sentencing errors does not vest a trial court with jurisdiction to consider the same. *Id.* at ¶16, 17.<sup>1</sup>

{¶4} For the same reasons expressed in *Carter*, 2006-Ohio-4205, we construe appellant's motion as a petition for postconviction relief. Because the petition only addresses sentencing errors and was not filed within the time frame of R.C. 2953.21(A)(2), the trial court had no jurisdiction to consider appellant's claim. The sole assignment of error is hereby overruled.

{¶5} Judgment affirmed.

YOUNG, P.J., and POWELL, J., concur.

---

1. We are not persuaded by appellant's argument that he is entitled to be resentenced pursuant to *Cunningham*. In *Cunningham*, the Supreme Court found a California determinate sentencing law unconstitutional because it permitted the sentencing court to enhance a prison term by finding one or more additional aggravating facts. Under the California law, judges were not free to exercise their "discretion to select a specific sentence within a defined range." *Cunningham*, 125 S.Ct. at 870. In Ohio, however, sentencing courts have full discretion to impose a prison sentence within the statutory or defined range. See *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, ¶100.



[Cite as *State v. Carter*, 2007-Ohio-4974.]