

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 108534
	:	
v.	:	
	:	
PAUL ROBINSON,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 14, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-06-483238-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Frank Romeo Zeleznikar, Assistant Prosecuting Attorney, *for appellant*.

Paul Robinson, *pro se*.

LARRY A. JONES, SR., J.:

{¶ 1} Defendant-appellant Paul Robinson (“Robinson”) appeals from the trial court’s April 15, 2019 judgment denying his motion to vacate his sentence. For the reasons that follow, we affirm the judgment.

{¶ 2} In October 2006, Robinson pleaded no contest to one count each of attempted murder, felonious assault, kidnapping, and domestic violence. With the exception of the domestic violence, the counts contained repeat violent offender (“RVO”) specifications. The trial court sentenced Robinson to a total 15-year prison term, which included terms on the repeat violent offender specifications to be served consecutively and prior to the terms on the base charges.

{¶ 3} Robinson filed a direct appeal, challenging his plea and the failure to order a competency examination. This court affirmed Robinson’s convictions. *State v. Robinson*, 8th Dist. Cuyahoga No. 89136, 2007-Ohio-6831 (“*Robinson I*”). In March 2019, Robinson filed a motion to vacate his sentence in the trial court, contending that his sentence was illegal. The trial court denied the motion. Robinson now appeals, raising the following three assignments of error for our review:

- I. The trial court erred in its original 2006 sentencing entry by dividing singular mandatory prison terms into a “hybrid” of mandatory and discretionary sub-terms, contrary to statutory provisions. The imposition of this hybrid sentence was unauthorized and unlawful pursuant to R.C. 2953.08(G)(2), such that it was plain error under Crim.R. 52(B) and is void.
- II. The trial court failed to substantially comply with Crim.R. 11(C)(2)(a). Appellant argues his plea of admit to the RVO specification was entered in violation of Crim.R. 11(C)(2)(a) because the trial court never informed appellant before accepting his no-contest plea that he would sentence appellant for the RVO specification — specifically that it was mandatory and would have to be served prior to and consecutively to the stated prison term imposed for the underlying offenses.
- III. The court erred in finding that the repeat violent offender statutes, R.C. 2941.149 and R.C. 2929.14(D), that were severed

[on] August 3, 2006, were applicable to appellant. The court did not merely express the factors that were considered, but explicitly made findings of fact and accepted into the record matters outside the purview of the case.

{¶ 4} Upon review, we find that the trial court lacked jurisdiction to consider Robinson’s postconviction motion and, therefore, we need not consider the merits of his arguments set forth in this appeal. Specifically, Robinson had two options to invoke the trial court’s continuing jurisdiction; he could have either filed (1) a motion to vacate a void conviction, or (2) a successive or belated petition for postconviction relief. The latter was not a viable option for him because R.C. 2953.23 only permits a successive petition for postconviction relief if (1) the defendant was unavoidably prevented from discovering facts upon which the petition must rely, or (2) the “United States Supreme Court recognized a new federal or state right that applies retroactively.” Neither exception applies here.

{¶ 5} In regard to the first way the trial court could have had jurisdiction to consider Robinson’s motion — that is, that his conviction was void — Robinson contends that his 15-year sentence is a hybrid of mandatory and discretionary terms in violation of *State v. Ware*, 141 Ohio St.3d 160, 2014-Ohio-5201, 22 N.E.3d 1082. In *Ware*, the Ohio Supreme Court concluded that “[n]o sentencing statute allows a court to divide a singular ‘mandatory prison term’ into a hybrid of mandatory and discretionary sub-terms” for the purposes of considering judicial release. *Id.* at ¶ 17.

{¶ 6} Robinson’s sentencing entry reflects that the trial court imposed a five-year term of imprisonment on the repeat violent offender specifications to be

served consecutive to a ten-year term on the accompanying base offenses. That sentence is not void, and therefore, the trial court lacked jurisdiction to consider the merits of Robinson's arguments.

{¶ 7} In light of the above, Robinson's assignments of error are without merit and are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., JUDGE

MARY J. BOYLE, P.J., and
SEAN C. GALLAGHER, J., CONCUR