

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27340

Appellee

v.

JOHN R. HEARD

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 2004 01 0093 (A)

Appellant

DECISION AND JOURNAL ENTRY

Dated: February 25, 2015

HENSAL, Presiding Judge.

{¶1} Defendant-Appellant John Heard appeals an order of the Summit County Court of Common Pleas that denied his motion to vacate a void judgment. For the following reasons, this Court affirms.

I.

{¶2} In 2004, Mr. Heard pleaded guilty to one count of rape, two counts of felonious assault, and nine counts of endangering children, for which the trial court sentenced him to life imprisonment with parole eligibility after ten years. Mr. Heard appealed his sentence, but this Court upheld it. In 2013, Mr. Heard moved to withdraw his plea, but the trial court denied his motion. This Court upheld its decision on appeal. Mr. Heard subsequently moved to have the judgment against him vacated, arguing that the trial court had not had subject matter jurisdiction over his case due to a deficiency in the complaint. The trial court denied his motion. Mr. Heard

has appealed to this Court, assigning as error that the trial court incorrectly denied his motion to vacate.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR WHEN IT CONVICTED DEFENDANT-APPELLANT WITHOUT FORMAL ACQUASATION (SIC) FOR ACQUIREMENT OF JURISDICTION OVER THE SUBJECT MATTER.

{¶3} Mr. Heard argues that the trial court lacked jurisdiction because the criminal complaint did not charge him with rape. He bases his assignment of error on the requirements for a complaint, outlined in Criminal Rule 3: “The complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance.”

{¶4} A trial court may obtain jurisdiction over a criminal defendant in more than one way. The Supreme Court of Ohio has explained, in a felony case, that “[a]n accused * * * is not tried upon the affidavit filed against him but on the indictment by the grand jury.” *Foston v. Maxwell*, 177 Ohio St. 74, 76 (1964). The Supreme Court has also noted that a flaw in a complaint is harmless error if the indictment puts a defendant on notice of all elements for each offense charged in the indictment. *State v. Wac*, 68 Ohio St.2d 84, 87 (1981), fn. 2. The record indicates that, in January 2004, the Grand Jury indicted Mr. Heard for rape, felonious assault, and endangering children. Although it later amended the indictment, both the original and amended indictment included the charge of rape, putting Mr. Heard on notice of all the elements for each offense. *Id.* Mr. Heard pleaded guilty to all twelve amended charges, including the rape charge. Upon review of the record, we conclude that the Grand Jury’s indictment properly

vested jurisdiction in the common pleas court. Accordingly, Mr. Heard's argument is without merit.

III.

{¶5} The trial court correctly denied Mr. Heard's Motion to Vacate Void Judgment Pursuant to Subject Matter Jurisdiction. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

WHITMORE, J.
CONCURS.

CARR, J.
CONCURRING IN JUDGMENT ONLY.

{¶6} I concur in judgment only on the basis that I would construe Heard’s motion as an untimely petition for post-conviction relief. The Supreme Court of Ohio recently reaffirmed that, “[a]bsent statutory authority, a trial court is generally not empowered to modify a criminal sentence by reconsidering its own final judgment. The court is committed to the principle that finality creates certainty in the law and public confidence in the system’s ability to resolve disputes.” *State v. Gilbert*, Slip Opinion No. 2014-Ohio-4562, ¶ 8. Heard was convicted in 2004 and his sentence was upheld on appeal. After attempting to withdraw his plea in 2013, Heard then attempted to have his conviction vacated. The mere fact that Heard couches his argument in terms of “voidness” does not remove his motion from the realm of post-conviction relief. In fact, a challenge which asserts that a judgment is “void or voidable” falls directly under R.C. 2953.21(A)(1)(a). *See, generally, State v. Reynolds*, 79 Ohio St.3d 158 (1997), syllabus. Thus, I would construe this motion filed nearly ten years after his conviction as an untimely petition for post-conviction relief as it was filed well outside the 180-day window prescribed by R.C. 2953.21(A)(2) and Heard did not demonstrate that his petition fell within the exceptions set forth in R.C. 2953.23(A)(1)/(2).

APPEARANCES:

JOHN R. HEARD, pro se, Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.