

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ADAMS COUNTY

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	Case No. 25CA1214
	:	
v.	:	
	:	
Willard E. Morrison,	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	

APPEARANCES:

Brian T. Goldberg, Cincinnati, Ohio, for appellant.

Aaron E. Haslam, Adams County Prosecutor, West Union, Ohio, for appellee.

Smith, P.J.

{¶1} Appellant, Willard Morrison, appeals the judgment of the Adams County Court of Common Pleas denying his Civ.R. 60(B) motion for relief from judgment. On appeal, appellant contends that the trial court erred in summarily denying his motion for relief from judgment. Because we conclude the trial court should have 1) recast appellant’s motion as an untimely petition for postconviction relief, which was also barred by res judicata, and 2) dismissed the petition for lack of jurisdiction, rather than denying it on its merits, we modify the trial court’s judgment pursuant to App.R. 12(A)(1)(a) to reflect the dismissal of appellant’s

postconviction petition. App.R. 12(A)(1)(a). *See also State v. Daboni*, 2021-Ohio-3368, ¶ 22 (4th Dist.); *State v. McManaway*, 2016-Ohio-7470, ¶ 19 (4th Dist.).

Accordingly, the judgment of the trial court is affirmed as modified based upon the foregoing reasons.

FACTS

{¶2} The subjects of appellant’s underlying 2007 no contest pleas, convictions and sentences are now before this Court for a third time. The first time this court considered arguments from appellant was in 2008, on his direct appeal from his convictions and sentences. *See State v. Morrison*, 2008-Ohio-4913 (4th Dist.) (“*Morrison I*”). The last time this Court considered arguments from appellant on these issues was in 2013, when we affirmed the trial court’s denial of appellant’s motion to withdraw his no contest pleas. *See State v. Morrison*, 2013-Ohio-5684 (4th Dist.) (“*Morrison II*”). It also appears that in between *Morrison I* and *II*, appellant filed several actions in federal court seeking a writ of habeas corpus.

In *Morrison I*, we observed the following underlying facts which led to appellant’s convictions and sentences:

On September 5, 2005, Sergeant Rex Branham of the Adams County Sheriff’s Department, while in uniform and on duty, stopped a vehicle driven by Morrison at the intersection of State Routes 125 and 348. Morrison exited his vehicle and fired gunshots in the direction of Sergeant Branham with an SKS assault rifle. The shots did not strike Sergeant Branham, but they

struck his marked police cruiser. After firing the shots, Morrison returned to his vehicle and fled the scene.

Sergeant Branham pursued Morrison in his police cruiser until Branham's cruiser became inoperable close to Compton Hill Road. Morrison then made a sudden u-turn at the intersection of Compton Hill Road, drove back toward Sergeant Branham's disabled police cruiser at a high rate of speed and rammed the police cruiser head-on. As a result, Sergeant Branham and Morrison both suffered severe injuries.

A grand jury indicted Morrison on two counts of attempted murder, first degree felonies in violation of R.C. 2903.02 and R.C. 2923.02. The first count included a gun specification. Morrison entered not guilty pleas.

After Morrison underwent competency evaluations, the court deemed Morrison competent to stand trial. Morrison then withdrew his not guilty pleas and entered pleas of no contest to both counts of attempted murder and the gun specification. The court accepted his pleas and found Morrison guilty as charged.

The court sentenced Morrison to ten years in prison on the count one attempted murder plus an additional seven years on the gun specification. The court sentenced Morrison to eight years in prison on the count two attempted murder. The court ordered that all three terms of prison run consecutive to each other, for a total prison sentence of 25 years.

Morrison I, at ¶ 2-6.

{¶3} In *Morrison I*, appellant raised the following assignments of error:

(1) THE TRIAL COURT ERRED WHEN IT SENTENCED MR. MORRISON BASED ON A NO CONTEST PLEA THAT WAS NOT KNOWING, INTELLIGENT, AND VOLUNTARY UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION, AND CRIM.R. 11; (2) WHERE THE TRIAL COURT DOES NOT MERGE

FOR PURPOSES OF SENTENCING DUPLICATIVE CRIMINAL COUNTS, THE CONSECUTIVE SENTENCES THAT RESULT ARE VOID. FURTHERMORE, THE SENTENCE MUST BE VACATED BECAUSE IT VIOLATES DOUBLE JEOPARDY PROTECTIONS AND DUE PROCESS OF LAW; (3) MR. MORRISON WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL WHERE TRIAL COUNSEL: 1) FAILED TO PURSUE WHETHER HIS CLIENT WAS CAPABLE OF UNDERSTANDING HIS PLEA OF “NO CONTEST” BEFORE ENTERING IT; AND 2) FAILED TO PROVIDE THE TRIAL COURT WITH ANY LEGAL POSITION ON MERGER OF THE SENTENCES FOR THE TWO COUNTS OF ATTEMPTED MERGER, DESPITE HIS ASSURANCE TO THE COURT THAT HE WOULD PROVIDE THAT ARGUMENT FOR THE TRIAL COURT'S ASSISTANCE BEFORE IT SENTENCED MR. MORRISON. COUNSEL'S FAILURES DEPRIVED MR. MORRISON OF HIS RIGHTS TO COUNSEL AND DUE PROCESS UNDER THE OHIO AND UNITED STATES CONSTITUTIONS; and (4) APPLICATION OF THE FEBRUARY 27, 2006 FOSTER RULING TO EVENTS OCCURRING ON SEPTEMBER 5, 2005 IS AN UNCONSTITUTIONAL APPLICATION OF RETROACTIVITY IN SENTENCING.

Id. at ¶ 7.

This Court found no merit to any of the arguments raised in appellant's direct appeal and affirmed the judgment of the trial court. *Id.* at ¶ 1.

{¶4} Thereafter, on March 11, 2013, appellant filed a motion to withdraw his no contest pleas, which was denied by the trial court. On appeal to this Court, appellant once again argued that he received ineffective assistance of trial counsel and that his pleas were not knowing, intelligent, and voluntary. *Morrison II* at ¶ 2. More specifically, he argued that counsel advised him he was facing a maximum

of 17 years in prison, rather than the 25 years he received. *Id.* at ¶ 14. He also argued that the trial court failed to merge his two attempted murder offenses into one conviction. *Id.* Finally, appellant argued he had received ineffective assistance of counsel. *Id.* Explaining that the voluntariness of appellant's plea had already been argued by appellant and addressed by this Court, we reasoned that "we cannot now address whether appellant entered a voluntary plea, as we have already concluded that he did." *Morrison II* at ¶ 16. We found the same reasoning applied to appellant's merger argument, which had already been argued on appeal and addressed by this Court in appellant's direct appeal. *Id.* at ¶ 17. Ultimately, we found that appellant's claims were barred by the doctrine of res judicata.

{¶5} Most recently, on February 18, 2025, appellant filed a pro se "Motion For Relief From Judgment." His motion was filed "pursuant to Rule 60(B)(1)(5), of the Ohio Rules of Civil Procedure." His motion expressly claimed "that this motion is the proper vehicle and should not be considered or construde [sic] as a post conviction [sic] petition."

{¶6} Appellant's motion argued that 1) he informed the trial court at sentencing that he did not understand part of the plea and sentence; 2) he stated at the sentencing hearing that he had no memory of the events that formed the basis of the charges; 3) he would not have entered his pleas if he had known he would be sentenced to an additional eight years; 4) the sentence imposed was within the

statutory range but was not within the agreed upon range; 5) his guilty plea was not knowing, intelligent, and voluntary; 6) the trial court erred in accepting his no contest pleas because he did not understand the plea ; 7) he requested the court vacate his no contest plea due to false information provided about the maximum penalty; 8) his counsel failed to advise him about the appealability differences of no contest and guilty pleas; 9) that his counsel provided ineffective assistance by failing to inform him he was facing 25 years, not 17 years; 10) the trial court erred in sentencing him to more than the maximum; and 11) he suffered harm by receiving 8 more years in prison than what he was informed he would receive.

{¶7} The State opposed the motion, arguing that appellant’s motion was essentially a petition for postconviction relief that was both untimely and barred by the doctrine of res judicata. On April 4, 2025, the trial court found appellant’s motion was not well taken and denied it. The trial court’s decision referenced that it was ruling on appellant’s “Motion for Relief from Judgment,” and there is no indication that the trial court recast the motion as a petition for postconviction relief. Appellant appealed from the trial court’s judgment on April 24, 2025, setting forth a single assignment of error for our review.

ASSIGNMENT OF ERROR

- I. THE TRIAL COURT ERRED IN SUMMARILY DENYING MR. MORRISON’S MOTION FOR RELIEF FROM JUDGMENT.

ASSIGNMENT OF ERROR I

{¶8} Appellant filed a motion for relief from judgment pursuant to Civ.R. 60(B), ostensibly under the authority granted in Crim.R. 57(B). Crim.R. 57(B) provides as follows:

If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules of criminal procedure and shall look to the rules of civil procedure and to the applicable law if no rule of criminal procedure exists.

The problem for appellant is that Crim.R. 35 provides for the filing of postconviction petitions for claims such as those raised by appellant in his motion and thus, there was no need for appellant to resort to the rules of civil procedure in raising his claims. However, appellant specifically requested that the trial court not recast his motion as a petition for postconviction relief, and there is no indication the trial court did so. Incidentally, a trial court's ruling on a motion for relief from judgment brought pursuant to Civ.R. 60(B), as well as a trial court's ruling on a petition for postconviction relief, are both reviewed for an abuse of discretion. *See Elliott v. Bobb*, 2024-Ohio-3095, ¶ 42 (4th Dist.); *State v. Shamblin*, 2025-Ohio-2760, ¶ 11 (4th Dist.).

{¶9} In *State v. Schlee*, the Supreme Court of Ohio grappled with how to handle motions such as the one filed by appellant, observing as follows:

When a defendant in a criminal case files a Civ.R. 60(B) motion requesting relief from a judgment, how is a trial court to proceed? The courts of appeals in Ohio have crossed the intersection of Civ.R. 60(B) and Crim.R. 57(B) in both directions. *See, e.g., State v. Israfil* (Nov. 15, 1996), Montgomery App. No. 15572, 1996 WL 665006, *1 (“Civ.R. 60(B) has no application to judgments in criminal cases”); *State v. Johnson* (Jan. 17, 2002), Richland App. No. 01-CA-88, 2002 WL 110571, *1 (“the Civil Rules do not apply in criminal cases”); *State v. Plassman*, Fulton App. No. F-03-017, 2004-Ohio-279, 2004 WL 103016, ¶ 7 (“Civ.R. 60(B) is available in criminal cases for certain procedures that were not anticipated by the criminal rules”); *State v. Wooden*, Franklin App. No. 02AP-473, 2002-Ohio-7363, 2002 WL 31894921, ¶ 8 (“Crim.R. 57(B) permits a court to look to the rules of civil procedure if no applicable rule of criminal procedure exists”). This split of authority is puzzling given the plain language of Crim.R. 57(B) that courts “shall look to the rules of civil procedure * * * if no rule of criminal procedure exists.” We would have thought that the clarity of that command would be impossible to miss if we had not made the same mistake ourselves. *See State ex rel. Natl. Broadcasting Co. v. Lake Cty. Court of Common Pleas* (1990), 52 Ohio St.3d 104, 108, 556 N.E.2d 1120 (“this order was issued in a criminal case, and hence Civ.R. 65 does not apply”). *But see id.* at 117, 556 N.E.2d 1120 (Douglas, J., concurring) (the majority's statement that Civ.R. 65 does not apply “ignores Crim.R. 57(B)”).

State v. Schlee, 2008-Ohio-545, ¶ 9.

The Court ultimately held in *Schlee* as follows: “Today we hold that the plain language of Crim.R. 57(B) permits a trial court in a criminal case to look to the Rules of Civil Procedure for guidance when no applicable Rule of Criminal Procedure exists. *Schlee* at ¶ 10.

{¶10} In *Schlee*, the Court stated that “[c]ourts *may* recast irregular motions into whatever category necessary to identify and establish the criteria by which the motion should be judged. (Emphasis added). *Schlee* at ¶ 12, quoting *State v. Bush*, 2002-Ohio-3993, in turn citing *State v. Reynolds*, 79 Ohio St.3d 158 (1997).

However, the Court later qualified that statement, acknowledging that “some motions may not be recast by a trial court.” *Schlee* at ¶ 13 (explaining that motions to withdraw guilty pleas pursuant to Crim. 32.1 exist independently from petitions for postconviction relief and therefore should not be recast as such, and also explaining that unlike a motion to withdraw a guilty plea, the “Civ.R. 60(B) motion filed in this case does not exist ‘independently’ from a petition for postconviction relief pursuant to Crim.R. 35 and R.C. 2953.21”). Thus, we understand *Schlee* to direct that if a motion is filed, postconviction, seeking to withdraw a guilty plea, such motion should not be recast as a petition for postconviction relief; however, other motions, such as a motion styled as a Civ.R. 60(B) motion for relief from judgment, should be and are properly recast as petitions for postconviction relief.

{¶11} Ultimately, the *Schlee* Court found that the motion for relief from judgment at issue met the definition of a petition for postconviction relief because it “was ‘(1) filed subsequent to [the defendant's] direct appeal, (2) claimed a denial of constitutional rights, (3) sought to render the judgment void, and (4) asked for

vacation of the judgment and sentence.’ ” *Schlee* at ¶ 12, quoting *State v. Reynolds, supra*, at 160. Interestingly, there was a concurring opinion filed in *Schlee* by Justice Cupp. The concurring opinion stated that while courts should recast “irregular, ‘no name’ ” motions, when motions are clearly labeled, they should not be recast. *Schlee* at ¶ 16. Justice Cupp stated that “[i]n such situations, the proper course for a trial court, in my view, is to simply deny the motion as improper under the rules, with, if appropriate, an explanation for the denial.” *Id.*

{¶12} As set forth above, appellant’s motion was styled as a Civ.R. 60(B) motion for relief from judgment. Appellant expressly stated in his motion that his motion should not be construed as a petition for postconviction relief. It appears the trial court honored this request and simply denied the motion without recasting it as a petition for postconviction relief, seemingly consistent with Justice Cupp’s concurring opinion in *Schlee*.

{¶13} Now, on appeal, appellant contends the trial court not only erred in denying his motion, but that it erred in failing to construe his motion as a petition for postconviction relief. In making his argument, he admits that if his motion were to have been construed as a petition for postconviction relief, it would have been time barred. He observes that there are exceptions to the time requirement contained in R.C. 2953.23, which governs the filing of petitions for postconviction relief, but he makes no argument that any of those exceptions apply. He further

seeks a remand to the trial court so that he “may further argue his petition for postconviction relief before the trial court and seek a hearing where he may offer further evidence and testimony.”

{¶14} Here, we find the varied arguments raised in appellant’s motion made it difficult to re-classify, or recast, the motion. The motion was filed post-conviction. It claimed he was denied his constitutional right to the effective assistance of counsel. It sought to render the judgment void and it also asked the trial court to vacate the judgment. Thus, the relief sought in appellant’s motion was consistent with a claim for postconviction relief. On the other hand, appellant’s motion also seemed to argue that his plea was invalid, that it was not made knowingly, intelligently, and voluntarily, and that the trial court erred in accepting his no contest plea. Thus, appellant’s motion arguably sought to have his no contest plea either withdrawn or vacated.

{¶15} However, as set forth above, appellant has already filed a direct appeal, as well as a motion to withdraw his no contest pleas, raising all of these same arguments. Importantly, all of these arguments have already been considered and rejected by this Court. Moreover, as noted in *Morrison II*, this Court has already determined that appellant’s no contest pleas were valid. *Morrison II* at ¶ 16. Thus, the arguments raised by appellant were barred by res judicata, whether

they were brought as a petition for postconviction relief, a post-sentence motion to withdraw a guilty plea, or a Civ.R. 60(B) motion for relief from judgment.

{¶16} Nevertheless, assuming *arguendo* that appellant is correct in his argument that the trial court should have recast his motion as a petition for postconviction relief, we will review his motion under that framework on appeal. *See State v. Waulk*, 2016-Ohio-5018 ¶ 6 (considering the appellant’s “Revised Amended Motion to Vacate Sentence and Acquit Petitioner * * *” as a petition for postconviction relief pursuant to R.C. 2953.21, even though it did not appear the trial court had recast the motion).

Standard of Review

{¶17} As briefly noted above, a trial court’s ruling on a petition for postconviction relief is reviewed for an abuse of discretion. *State v. Carver*, 2022-Ohio-2653, ¶ 11 (4th Dist.). An “abuse of discretion” is more than an error of law or judgment; it implies that the trial court’s attitude was unreasonable, arbitrary or unconscionable. *See State v. Jayjohn*, 2021-Ohio-2286, ¶ 9 (4th Dist.); *State v. Herring*, 94 Ohio St.3d 246, 255 (2002); *State v. Adams*, 62 Ohio St.2d 151 (1980). In reviewing for an abuse of discretion, appellate courts must not substitute their judgment for that of the trial court. *See Carver, supra*, at ¶ 12; citing *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 732 (1995); *In re Jane Doe I*, 57 Ohio St.3d 135, 137-138 (1991).

{¶18} Further, although appellant requested a hearing on his motion, we note that a criminal defendant seeking to challenge a conviction through a petition for postconviction relief is not automatically entitled to an evidentiary hearing. *State v. Calhoun*, 86 Ohio St.3d 279, 282 (1999), citing *State v. Cole*, 2 Ohio St.3d 112 (1982). Before granting an evidentiary hearing, the trial court must consider the petition, supporting affidavits, documentary evidence, files and records including the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript, to determine whether there are substantive grounds for relief. R.C. 2953.21(C). If the court concludes that petitioner has failed to set forth operative facts to establish substantive grounds for relief, no hearing is necessary. *See Calhoun, supra*, at paragraph two of the syllabus; *see also State v. Slagle*, 2012-Ohio-1936, ¶ 14, quoting *State v. Bradford*, 2009-Ohio1864, ¶ 10 (4th Dist.).

Postconviction relief

{¶19} R.C. 2953.21 governs a petition for postconviction relief. Any person convicted of a criminal offense who claims a denial or infringement of rights to such a degree as to render a judgment void or voidable may file a petition for postconviction relief. R.C. 2953.21(A)(1)(a). “[A] postconviction proceeding is not an appeal of a criminal conviction but rather, is a collateral, civil attack on a criminal judgment.” *State v. Broom*, 2016-Ohio-1028, ¶ 28, citing *State v. Steffen*,

70 Ohio St.3d 399, 410 (1994); *accord State v. Betts*, 2018-Ohio-2720, ¶ 11 (4th Dist.); *State v. Brown*, 2022-Ohio-519, ¶ 6 (4th Dist.).

{¶20} Postconviction relief is not a constitutional right; instead, it is a narrow remedy that gives the petitioner no more rights than those granted by statute. *State v. Smith*, 2020-Ohio-116 (4th Dist.); *Carver, supra*, at ¶ 11; *State v. Brown*, 2022-Ohio-519, ¶ 7 (4th Dist.). Postconviction relief is a means to resolve constitutional claims that cannot be addressed on direct appeal because the evidence supporting the claims is not contained in the record. *Carver* at ¶ 11. This means that “any right to postconviction relief must arise from the statutory scheme enacted by the General Assembly.” *State v. Apanovitch*, 2018-Ohio-4744, ¶ 35.

{¶21} R.C. 2953.21(A)(2) provides that a petitioner must file a postconviction relief petition no later than 365 days after the date on which the trial transcript was filed in the court of appeals in the direct appeal of the judgment of conviction. In the case sub judice, appellant’s petition was filed approximately 17 years after the filing of the transcript in his direct appeal. Thus, the lapse of time alone should bar consideration of appellant’s postconviction relief petition. *See State v. Rinehart*, 2018-Ohio-1261, ¶ 13 (4th Dist.) (petition filed 10 years after expiration of 365-day period untimely); *State v. Heid*, 2016-Ohio-2756, ¶ 1 (4th Dist.) (petition filed seven years after expiration of time for filing an appeal

untimely); *State v. Mitchell*, 2021-Ohio-4386, ¶ 20 (4th Dist.) (petition filed four years after expiration of 365-day period untimely).

{¶22} Moreover, when a defendant files an untimely petition or a successive petition, R.C. 2953.23(A) prevents trial courts from considering the petition unless both of the following apply: 1) petitioner shows he or she “was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief,” or “the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner’s situation, and the petition asserts a claim based on that right;” and 2) “[t]he petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty.” R.C. 2953.23(A)(1)(a) and (b).¹

{¶23} “A defendant is ‘unavoidably prevented’ from the discovery of facts if he had no knowledge of the existence of those facts and could not have, in the exercise of reasonable diligence, learned of their existence within the time specified for filing his petition for postconviction relief.” *State v. Cunningham*, 2016-Ohio-3106, ¶ 19 (3d Dist.), citing *State v. Holnapy*, 2013-Ohio-4307, ¶ 32 (11th Dist.), and *State v. Ruark*, 2015-Ohio-3206, ¶ 11 (10th Dist.); see also *State*

¹ Another exception, inapplicable here, allows a court to entertain an untimely, second, or successive petition if DNA testing results “establish, by clear and convincing evidence” the petitioner’s “actual innocence.” R.C. 2953.23(A)(2).

v. Brown, supra, at ¶ 9 (4th Dist.). Moreover, “[t]he ‘facts’ contemplated by this provision are the historical facts of the case, which occurred up to and including the time of conviction.” *State v. Williamitis*, 2006-Ohio-2904, ¶ 18 (2d Dist.).

{¶24} A trial court lacks jurisdiction to consider an untimely or a successive petition if the petitioner fails to satisfy R.C. 2953.23(A)(1)(a) and (b). *State v. Parker*, 2019-Ohio-3848, ¶ 19. Furthermore, whether a court possesses jurisdiction to entertain an untimely or a successive petition is a question of law that appellate courts review independently and without deference to the trial court. *Apanovitch, supra*, at ¶ 24; *Brown, supra*, at ¶ 10.

{¶25} Here, appellant argues the trial court should have recast his motion for relief from judgment as a petition for postconviction relief but concedes that the petition was untimely. Although he references that there are exceptions that excuse an untimely filing, he makes no argument regarding the applicability of those exceptions in this case. Further, even assuming *arguendo* that appellant met the first prong required to overcome the untimely filing, he has not satisfied the second prong. More specifically, appellant has not claimed that he was innocent, or that but for constitutional error at trial, no reasonable factfinder would have found him guilty. Thus, appellant has not established that the trial court could properly address the merits of his untimely petition.

{¶26} Based upon the foregoing, we find no prejudice in the trial court's failure to recast appellant's motion as a petition for postconviction relief. Had the trial court recast the motion in accordance with *Schlee, supra*, it was still untimely filed. *See State v. Berk, III*, 2024-Ohio-1218, ¶ 7 (where it was unclear whether the trial court had recast a motion for relief from judgment as a petition for postconviction relief, the court found that because the appellant was not entitled to relief under either basis, there was no prejudice). Furthermore, as discussed above, all of the arguments had been previously raised and rejected by this Court and thus, were barred by the doctrine of res judicata.

{¶27} Based upon the foregoing, we conclude that appellant's claims, recast as claims for postconviction relief, were both time-barred and barred by the doctrine of res judicata. Although the trial court denied the claims contained in the motion, it should have dismissed them as it lacked jurisdiction to entertain them. This Court has recently reminded trial courts that when an appellant has not established that any exception applies, a court lacks jurisdiction to consider the petition. *See State v. McDaniel*, 2023-Ohio-3051, ¶ 21, citing *Brown*, 2022-Ohio-519, ¶ 14 (4th Dist.). As in both *Brown* and *McDaniel*, in the case at bar the trial court "technically erred" by denying appellant's motion rather than dismissing the petition for lack of jurisdiction. *Id.*, citing *State v. McManaway*, 2016-Ohio-7470, ¶ 16 (4th Dist.). Thus, under App.R. 12(A)(1)(a), we modify the trial court's

judgment to reflect the dismissal of appellant's motion, which this Court has determined should have been recast a petition for postconviction relief. *Id.*, see also *State v. Daboni*, 2021-Ohio-3368, ¶ 22 (4th Dist.); *McManaway*, *supra*, at ¶ 19.

{¶28} Accordingly, trial court's judgment is affirmed as modified.

JUDGMENT AFFIRMED AS MODIFIED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED AS MODIFIED and costs be assessed to appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Adams County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Abele, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.