

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

STATE OF OHIO,	:	APPEAL NO. C-180504
	:	TRIAL NO. B-0603318
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
JACK BRICE,	:	
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 Jack Brice advances a single assignment of error on appeal, challenging the Hamilton County Common Pleas Court’s judgment overruling his 2018 “Motion to Vacate Void Sentence.” We affirm the court’s judgment as modified to dismiss the motion for lack of jurisdiction.

Mr. Brice’s underlying conviction in this case stems from a 2006 incident in which, while fleeing from the police, Mr. Brice attempted to fire a gun at the pursuing officers. By mere happenstance, the gun failed to discharge, as the police successfully discharged the weapon in a subsequent test. Mr. Brice was ultimately apprehended and indicted on various charges, and pleaded guilty to two counts of felonious assault with firearm specifications, having a weapon under disability with a firearm specification, and carrying a concealed weapon. A jointly agreed sentence of 20 years was imposed.

On direct appeal, Mr. Brice’s counsel filed an *Anders* brief with this court, and Mr. Brice consequently submitted five potential grounds for error to this court. Despite Mr. Brice’s challenges to various aspects of his conviction, including the sentence, this

court found the record free from prejudicial error and without grounds for a meritorious appeal. *See State v. Brice*, 1st Dist. Hamilton No. C-070128 (March 19, 2008), *appeal not accepted*, 119 Ohio St.3d 1412, 2008-Ohio-3880, 891 N.E.2d 771. About a decade later, Mr. Brice filed a “Motion to Vacate Void Sentence,” which was subsequently overruled by the trial court, and now forms the basis for his current appeal.

Mr. Brice’s “Motion to Vacate Void Sentence,” however, failed to specify under which statute or rule this relief might have been afforded, leaving the trial 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. Mr. Brice’s motion challenges a statutory violation, arguing that his conviction does not support imposition of the seven-year gun specification in R.C. 2941.1412, thus precluding review under R.C. 2953.21(A)(1) for constitutional errors. Moreover, the motion does not seek relief under any other apparent postconviction procedure, either as provided by statute or the criminal rules. *See State v. Dardinger*, 1st Dist. Hamilton No. C-160467, 2017-Ohio-1525, ¶ 8-9 (noting appellant’s postconviction motion was not reviewable under either Crim.R. 32.1 or 33, as a petition for a writ of mandamus or habeas corpus, or a declaratory judgment action).

Finally, while a court retains jurisdiction to correct a void sentence, *e.g.*, *State v. Braggs*, 1st Dist. Hamilton No. C-130073, 2013-Ohio-3364, ¶ 11, Mr. Brice’s challenge to his sentence rests on grounds already addressed and resolved by this court. R.C. 2953.08(D)(1) precludes appellate review of a sentence where the “sentence is authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge.” This court confirmed that the sentence was authorized by law by finding that R.C. 2953.08(D)(1) precluded appellate review of Mr. Brice’s sentence. *See Brice*, 1st Dist. Hamilton No. C-070128. Moreover, insomuch as Mr. Brice challenges the evidence underlying the gun specification, such a challenge to the sufficiency of the evidence was waived via entry of his guilty plea. *See State v. Young*, 1st Dist. Hamilton No. C-170628, 2019-Ohio-134, ¶ 9 (“Moreover, with

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his guilty plea to count 17's firearm specification, Young waived the challenge \* \* \* to the sufficiency of the evidence to prove the specification.”). Based on the foregoing, we conclude that the court lacked jurisdiction to entertain Mr. Brice's motion. See *Dardinger*, 1st Dist. Hamilton No. C-160467, 2017-Ohio-1525, at ¶ 10; *State v. Jones*, 2d Dist. Montgomery No. 20250, 2004-Ohio-5812, ¶ 8.

Because the common pleas court had no jurisdiction to entertain Mr. Brice's "Motion to Vacate Void Sentence," the motion was subject to dismissal. Accordingly, we modify the judgment appealed to reflect the dismissal of the motion. See App.R. 12(A)(1)(a). 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.

**MYERS, P.J., BERGERON and WINKLER, JJ.**

To the clerk:

Enter upon the journal of the court on October 9, 2019,  
per order of the court\_\_\_\_\_.

Presiding Judge