

[Cite as *State v. Brown*, 2009-Ohio-5347.]

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

STATE OF OHIO,	:	APPEAL NO. C-081026
	:	TRIAL NO. B-0307193A
Respondent-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
BARRON BROWN,	:	
	:	
Petitioner-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Sentences Vacated and Cause Remanded

Date of Judgment Entry on Appeal: October 9, 2009

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Philip R. Cummings*,
Assistant Prosecuting Attorney, for Respondent-Appellee,

Barron Brown, pro se.

Please note: This case has been removed from the accelerated calendar.

Per Curiam.

{¶1} Petitioner-appellant Barron Brown presents on appeal a single assignment of error, challenging the Hamilton County Common Pleas Court's judgment denying his postconviction petition. We do not reach the merits of this challenge because Brown's sentences were void. But because his sentences were void, the common pleas court should have vacated them.

{¶2} Brown was convicted in 2004 upon jury verdicts finding him guilty of possessing, trafficking in, and conspiring to traffic in heroin. In his direct appeal, we reversed his conspiracy conviction, but affirmed his possession and trafficking convictions.¹ The Ohio Supreme Court declined further review of his possession and trafficking convictions.² And we affirmed the common pleas court's judgment denying his 2007 postconviction petition.³

{¶3} In September 2008, Brown again sought postconviction relief. He asserted that his possession and trafficking sentences were void because the trial court had failed to adequately notify him at sentencing concerning postrelease control. The common pleas court denied the petition, and this appeal followed.

{¶4} The common pleas court properly declined to entertain Brown's postconviction petition on its merits. His direct appeal from his judgment of conviction had divested the trial court of jurisdiction over his case, except to act in aid of the appeal or in a manner not inconsistent with our jurisdiction.⁴ The trial court did not regain jurisdiction after we had decided the appeal because we did not

¹ See *State v. Brown* (Dec. 15, 2004), 1st Dist. No. C-040103.

² See *State v. Brown*, 106 Ohio St.3d 1488, 2005-Ohio-3978, 832 N.E.2d 739.

³ See *State v. Brown* (Aug. 6, 2008), 1st Dist. Nos. C-070865 and C-070877.

⁴ *In re Kurtzhalz* (1943), 141 Ohio St. 432, 48 N.E.2d 657, paragraph two of the syllabus; accord *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207; *State ex rel. Special Prosecutors v. Judges* (1978), 55 Ohio St.2d 94, 97, 378 N.E.2d 162.

remand the case.⁵ And R.C. 2953.21 et seq. did not confer jurisdiction on the common pleas court to entertain Brown's postconviction petition because he failed to satisfy either the time restrictions of R.C. 2953.21(A)(2) or the jurisdictional requirements of R.C. 2953.23.

{¶5} But a trial court retains jurisdiction to correct a void judgment.⁶ R.C. 2929.19(B)(3)(c) required the trial court to notify Brown at sentencing concerning postrelease control. Because the court failed to do so, Brown's sentences were void, and he was entitled to a new sentencing hearing.⁷ Thus, the common pleas court, although lacking jurisdiction to consider Brown's postconviction claim on its merits, should have vacated the void sentences and conducted a new sentencing hearing.⁸

{¶6} We, therefore, vacate Brown's sentences and remand this case for a new sentencing hearing in accordance with the law and this decision.

Sentences vacated and cause remanded.

HENDON, P.J., HILDEBRANDT and SUNDERMANN, JJ.

Please Note:

The court has recorded its own entry on the date of the release of this decision.

⁵ See *State ex rel. Special Prosecutors*, 55 Ohio St.2d at 97.

⁶ See *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶18-19.

⁷ See *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, syllabus; *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864, syllabus; accord *State v. Buckner*, 1st Dist. No. C-080684, 2009-Ohio-3612; *State v. Hampton*, 1st Dist. No. C-080187, 2008-Ohio-6088; *State v. Millow*, 1st Dist. No. C-060771, 2007-Ohio-3681.

⁸ See *State v. Fields*, 1st Dist. C-080825, 2009-Ohio-4187 (holding that a common pleas court confronted with a late postconviction petition challenging a void sentence must ignore the petition's "procedural irregularities," vacate the void sentence, and resentence the defendant); see, also, *Buckner*, supra; *Millow*, supra (holding that the common pleas court, although lacking jurisdiction to entertain the defendant's postconviction "motion," should have vacated the defendant's void sentences and conducted a new sentencing hearing).