

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2013-12-234
 :
 - vs - : OPINION
 : 3/2/2015
 :
 HERLESS D. ASHER, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR09-10-1853

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Herless D. Asher, #A575949, Southern Ohio Correctional Institution, P.O. Box 45699, Lucasville, Ohio 45699, defendant-appellant, pro se

RINGLAND, J.

{¶ 1} Defendant-appellant, Herless D. Asher, appeals the decision of the Butler County Court of Common Pleas, denying his motion to appoint counsel and withdraw his guilty plea.

{¶ 2} On January 31, 2008, Asher pled guilty to one count of robbery and two counts of complicity to robbery. He was then sentenced to an aggregate term of ten years in prison.

{¶ 3} Asher subsequently filed a direct appeal to this court. On November 10, 2008, this court affirmed the trial court's judgment. *State v. Asher*, 12th Dist. Butler No. CA2008-03-074 (Nov. 10, 2008) (accelerated calendar judgment entry) (*Asher I*). However, on February 24, 2010, Asher was resentenced to properly notify him of the mandatory nature of his three-year term of postrelease control.

{¶ 4} On February 11, 2013, Asher moved the trial court for the appointment of counsel and to withdraw his guilty plea. In finding the motion untimely, the trial court construed the motion as one for postconviction relief. Asher did not appeal that decision. On October 22, 2013, Asher again filed a motion to withdraw his guilty plea pursuant to Crim.R. 32.1. The trial court again construed the motion as one for postconviction relief and denied it on the basis of res judicata.

{¶ 5} Asher now appeals that decision. While Asher does not expressly set forth assignments of error as required by App.R. 16(A)(3), he essentially argues that the trial court erred in denying his motion to withdraw his guilty plea because the principal actor was not found guilty of the crimes for which Asher pled guilty as a complicitor.

{¶ 6} The Ohio Supreme Court has recognized that postconviction relief remedies pursuant to R.C. 2953.21 and 2953.23 do not govern a Crim.R. 32.1 postsentence motion to withdraw a guilty plea. *State v. Bush*, 96 Ohio St. 3d 235, 238, 2002-Ohio-3993, ¶ 14. This is true regardless of whether the Crim.R. 32.1 motion to withdraw guilty plea is based on constitutional violations. *Id.* at ¶ 12. Postsentence motions to withdraw guilty or no contest pleas and postconviction relief petitions exist independently. Asher's October 22, 2013 motion is specifically delineated as a "motion for withdrawal of guilty plea under criminal rule 32.1." Accordingly, Asher's motion must be treated as a Crim.R. 32.1 motion to withdraw guilty plea rather than a petition for postconviction relief.

{¶ 7} In the present case, Asher's conviction and sentence were affirmed by this

court in *Asher I*. A trial court is without jurisdiction to decide a motion to withdraw a guilty plea, absent a remand, once an appellate court has affirmed the conviction on direct appeal. *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94 (1978); *State v. Williams*, 12th Dist. Warren No. CA2010-06-050, 2011-Ohio-1875.

{¶ 8} Therefore, because the trial court did not have jurisdiction to decide the motion that is the subject of this appeal, the trial court's judgment is null and void. "The effect of determining that a judgment is void is well established. It is as though such proceedings had never occurred; the judgment is a mere nullity and the parties are in the same position as if there had been no judgment." *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, ¶ 12, quoting *Romito v. Maxwell*, 10 Ohio St.2d 266, 267-268 (1967). As this court does not have jurisdiction to review void orders, we are unable to reach the merits of appellant's arguments on appeal. See *Lyttle v. State*, 12th Dist. Butler No. CA2010-04-089, 2010-Ohio-6277, ¶ 17.

{¶ 9} This appeal is dismissed for lack of jurisdiction.

M. POWELL, P.J., and HENDRICKSON, J., concur.