

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 08AP-446
	:	(C.P.C. No. 03CR-5424)
Ronald Payne,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on October 7, 2008

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Ronald Payne, pro se.

APPEAL from the Franklin County Court of Common Pleas.

TYACK, J.

{¶1} Ronald Payne is appealing from the refusal of the trial court to modify his sentence of incarceration of 35 years following his filing of a Civ.R. 60(B) motion. Payne assigns two errors for our consideration:

[I.] The trial court erred when it failed to recognize the judgment against Appellant was voidable and to provide relief from same.

[II.] The First Appellate District Court has ruled that the exclusive method of challenging a voidable sentence is by use of Civil Rule 60(B), but the trial court erred when it

recast Appellants Civil Rule 60(B) motion as a petition for post conviction relief and denied same based on time constraints not applicable to Civil Rule 60(B).

{¶2} Addressing the second assignment of error first, this court has consistently treated the filing of Civ.R. 60(B) motions as a form of filing a petition for post-conviction relief. The Supreme Court of Ohio has agreed with the treatment of Civ.R. 60(B) motion in the recent case of *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545.

{¶3} Clearly, Payne's motion was not filed within the time permitted for the filing of a petition for post-conviction relief. Therefore, the trial court did not err either in treating the Civ.R. 60(B) motion as a form of a petition for post-conviction relief or in finding the motion/petition to be barred by R.C. 2953.21.

{¶4} The second assignment of error is overruled.

{¶5} In light of our finding in the second assignment of error, the first assignment of error is without merit. The trial court was barred by statute from granting relief. Further, the issues Payne attempts to argue have been addressed by prior rulings of this court and by the Supreme Court of Ohio. Thus, the legal principles of law of this case and *res judicata* also bar relief.

{¶6} The first assignment of error is overruled.

{¶7} Both assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and SADLER, JJ., concur.
