

APPENDIX A



SUPREME COURT OF GEORGIA
Case No. S25A0176

October 22, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

MARCUS CROWDER v. THE STATE.

Appellant was convicted in 1996 of felony murder, two counts of aggravated assault, false imprisonment, and possession of a firearm during the commission of a crime; this Court affirmed. See *Crowder v. State*, 268 Ga. 517 (491 SE2d 323) (1997). On July 17, 2024, appellant returned to the trial court and filed a “Motion to Declare Null and Void the Trial Court’s Invalid Judgment and Illegal Sentence.” The trial court denied the motion on July 26, 2024, and Crowder filed a timely notice of appeal directed to this Court.

As an initial matter, this Court has subject matter jurisdiction over this direct appeal by virtue of appellant’s conviction for felony murder, see Ga. Const. of 1983, Art. VI, Sec. VI, Par. III (8). However, a motion to vacate a judgment of conviction as void is not an appropriate remedy in a criminal case and appeals from such motions are subject to dismissal. See *Harper v. State*, 286 Ga. 216, 218 (686 SE2d 786) (2009). Further, a trial court’s jurisdiction to rule on a motion challenging a sentence as void more than one year after imposition of the sentence exists only to the extent that the motion presents a cognizable claim that the sentence was void. See *von Thomas v. State*, 293 Ga. 569, 571 (748 SE2d 446) (2013); see also *Roberts v. State*, 286 Ga. 532, 532 (690 SE2d 150) (2010) (regardless of nomenclature, when what appellant seeks is to set

aside or vacate his conviction, his direct appeal is subject to dismissal). Here, appellant asserted in his motion that all of the charges in the indictment were based on the same underlying facts and criminal conduct as to a single victim, and he argued that, because the jury found him not guilty of malice murder, its acquittal precluded further adjudication of the other counts of the indictment. In denying Crowder's motion, the trial court concluded that the issue of double jeopardy did not preclude a defendant from facing a single prosecution for multiple crimes based on the same conduct. See OCGA § 16-1-7; *Dugger v. State*, 297 Ga. 120, 122 (772 SE2d 695) (2015) (concluding that "a jury is clearly authorized to find a defendant guilty of felony murder even where it finds that a defendant did not possess the requisite 'malice' to sustain a malice murder conviction") (citations omitted).

Appellant's argument is not a colorable claim that his sentence is void. See *von Thomas*, 293 Ga. at 572 (colorable void sentence claims are limited to those where "even assuming the existence and validity of the conviction for which the sentence was imposed — the law does not authorize that sentence, most typically because it exceeds the most severe punishment for which the applicable penal statute provides.") Accordingly, appellant is not entitled to an appeal and the trial court lacked jurisdiction to consider his motion in the first place. When a trial court denies on the merits "a motion it lacked jurisdiction to decide, we vacate the trial court's order and remand with instructions to dismiss." *Brooks v. State*, 301 Ga. 748, 752 (804 SE2d 21) (2017). Therefore, the trial court's July 26, 2024 order is vacated and the proceedings are remanded to that court for the entry of an order dismissing Appellant's motion.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the
minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto
affixed the day and year last above written.

APPENDIX A

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**Additional material
from this filing is
available in the
Clerk's Office.**