

untimely petition for post-conviction relief and dismissing it on that basis. He claims the trial court should have analyzed it as a direct challenge to the constitutionality of Ohio's rape statute rather than a collateral attack on his rape conviction.

{¶ 3} Even if we were to accept Patterson's assertion that his filing was a true complaint for declaratory judgment and not a post-conviction-relief petition, the trial court properly dismissed it. A trial court cannot enter declaratory judgment for a defendant in a criminal case. Accordingly, the trial court's judgment will be affirmed.

I. Background

{¶ 4} In October 2020, Patterson was convicted of rape in violation of R.C. 2907.02(A)(1)(b) and sentenced to life in prison with parole eligibility after 10 years. In December 2023, he filed a "motion for relief from judgment based on constitutional law change." He argued that a recent amendment to the Ohio Constitution made the rape statute unconstitutional. He reasoned that the amendment, which granted every individual a "right to make and carry out" his or her own "reproductive decisions," gave him a constitutional right to engage in sexual conduct with children. The trial court treated the motion as an untimely petition for post-conviction relief and denied it on that basis.

{¶ 5} Thereafter, in February 2024, Patterson filed a Civ.R. 57 "complaint for declaratory judgment" in his criminal case. He sought a declaration that the recent amendment to the Ohio Constitution rendered the rape statute unconstitutional. He again argued that the amendment gave him a constitutional right to have sex with children. The State moved to dismiss the complaint. It cited perceived procedural or technical defects. It also argued that what Patterson ultimately desired was post-conviction relief overturning

his conviction based on a finding that the rape statute was unconstitutional. The trial court once again treated Patterson's filing as an untimely post-conviction-relief petition and denied it on that basis. This appeal followed.

II. Analysis

{¶ 6} Patterson advances the following six assignments of error:

I. The Common Pleas judge erred by inserting a false statement in the Judgment Entry.

II. The Common Pleas judge erred by failing to determine whether no justiciable or actual controversy existed before dismissing the Complaint for Declaratory Judgment.

III. The Common Pleas judge erred in considering references outside the record when ruling on the Motion to Dismiss.

IV. The Common Pleas judge erred in considering the Complaint for Declaratory Judgment as a collateral challenge to the validity of a conviction or sentence instead of a constitutional challenge of a statute.

V. The Common Pleas judge erred in improperly re-casting the Complaint for Declaratory Judgment into a Petition for Post-Conviction Relief.

VI. The Common Pleas judge erred in denying the Appellant substantive due course of law in accordance with Section 16, Article I of the Ohio Constitution.

{¶ 7} Patterson maintains that the trial court should not have treated an unambiguous complaint for declaratory judgment as a post-conviction relief petition.

Moreover, when properly viewed as a complaint for declaratory judgment, he asserts that his filing was not subject to dismissal. Patterson's first, fourth, and fifth assignments of error address the trial court's treatment of his complaint for declaratory judgment as a petition for post-conviction relief. His second, third, and sixth assignments of error address whether dismissal of a true complaint for declaratory judgment was proper.

{¶ 8} For purposes of our analysis, we note that Patterson has disavowed any reliance on the post-conviction-relief statute, insisting that he filed a straightforward declaratory-judgment action. Indeed, he did file a clear Civ.R. 57 "complaint for declaratory judgment" seeking only a declaration that Ohio's rape statute is unconstitutional. As we will explain below, we presume the trial court construed Patterson's filing as a petition for post-conviction relief because a defendant cannot obtain a declaratory judgment in a criminal action.

{¶ 9} Nevertheless, given the unambiguous nature of Patterson's filing and his insistence that he had no intent to obtain post-conviction relief challenging his conviction (as opposed to simply having the rape statute declared unconstitutional), we will proceed on the assumption that he in fact filed a true complaint for declaratory judgment. Viewing the case in that posture, Patterson's second, third, and sixth assignments of error are the critical ones.

{¶ 10} In his second assignment of error, Patterson contends his complaint satisfied the requirements for declaratory relief and should not have been dismissed. In his third assignment of error, he argues that the trial court erred in dismissing the complaint without exercising its judgment and ruling on the merits. Similarly, in his sixth

assignment of error, he asserts that the trial court deprived him of “due course of law” by dismissing his complaint without addressing the constitutionality of the rape statute.

{¶ 11} Upon review, we find the foregoing arguments to be unpersuasive. “An action for a declaratory judgment pursuant to R.C. Chapter 2721 is a civil action[.]” *Sterling Drug, Inc. v. Wickham*, 63 Ohio St.2d 16, 21 (1980). The same is true under Civ.R. 57, which incorporates R.C. Chapter 2721. The Ohio Supreme Court has characterized a declaratory-judgment action as a “ ‘distinct proceeding.’ ” *State ex rel. Alford v. Adult Parole Auth.*, 2017-Ohio-8773, ¶ 8, quoting *Fuller v. German Motor Sales, Inc.*, 51 Ohio App.3d 101, 103 (1st Dist. 1988). We have observed that “ ‘[d]eclaratory judgment is a civil remedy typically invoked at the outset of a civil case.’ ” *State v. Russell*, 2017-Ohio-7198, ¶ 10 (2d Dist.), quoting *Russell v. Turner*, S.D. Ohio No. 3:15-cv-165, *3 (May 21, 2015). “For direct and collateral attacks alike, declaratory judgment is simply not a part of the criminal appellate or postconviction review process.” *Lingo v. State*, 2014-Ohio-1052, ¶ 44.

{¶ 12} The Ninth District Court of Appeals has recognized that “[a] court cannot enter a declaratory judgment in a criminal case because the indictment invokes the trial court’s jurisdiction over a criminal matter, not to issue a declaratory judgment.” *State v. Rivera*, 2009-Ohio-1428, ¶ 13 (9th Dist.). After finding declaratory judgment inappropriate in a criminal case, the Ninth District added: “Not surprisingly, the parties have not cited any case that has considered whether a trial court, sitting in a criminal case, could grant a declaratory judgment.” *Id.* Courts in other jurisdictions have addressed the issue, however, and like the Ninth District have determined that a trial court cannot do so. See

Ex parte Williams, 786 S.W.2d 781, 782 (Tex. App. 1990) (“The Declaratory Judgments Act is purely a creature of civil law. It has no application in criminal proceedings.”); *United States v. Fishman*, 2017 WL 3446627, *2 (N.D. Okla. 2017) (“Defendant has cited no authority that the Court can enter a declaratory judgment in a criminal case[.]”); *Jones v. State*, 2018 WL 6822749, *2 (Md. Ct. Spec. App. 2018) (“We begin by noting that a petition for declaratory judgment may not be filed in a criminal case.”).

{¶ 13} Based on the foregoing authority, we hold that the trial court properly dismissed Patterson’s complaint for declaratory judgment. Insofar as the trial court construed the complaint as a petition for post-conviction relief, we will sustain Patterson’s first, fourth, and fifth assignments of error. However, any error in recasting the complaint as an untimely post-conviction-relief petition was harmless because it remained subject to dismissal on the grounds that a trial court cannot enter declaratory judgment for a defendant in a criminal case. For that reason, we overrule Patterson’s second, third, and sixth assignments of error.

III. Conclusion

{¶ 14} The judgment of the Greene County Common Pleas Court is affirmed.

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EPLEY, P.J. and HUFFMAN, J., concur.