

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

STATE OF OHIO,	:	APPEAL NO. C-150359
Plaintiff-Appellee,	:	TRIAL NO. B-0804113
vs.	:	<i>JUDGMENT ENTRY.</i>
LARRY D. WILLIAMS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Larry D. Williams appeals from the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Consolidate/Merge Counts for the Purpose of Sentencing.” We affirm the court’s judgment as modified.

Williams was convicted in 2009 of aggravated robbery and felonious assault. He unsuccessfully challenged his convictions in his direct appeal to this court and in postconviction motions filed with the common pleas court in 2010 and 2015. *See State v. Williams*, 1st Dist. Hamilton No. C-090779 (Sept. 15, 2010).

In this appeal, he advances a single assignment of error, challenging the overruling of his 2015 “Motion to Consolidate/Merge Counts for the Purpose of Sentencing.” We overrule the assignment of error, because the common pleas court had no jurisdiction to entertain the motion.

In his motion, Williams contended that his offenses were allied offenses of similar import subject to merger under R.C. 2941.25. He did not designate a statute or rule under which he might be afforded the relief sought. R.C. 2953.21 et seq., governing the proceedings upon a postconviction petition, provide “the exclusive remedy by which a person may bring a collateral challenge to the validity of a conviction or sentence in a criminal case.” See R.C. 2953.21(J). Therefore, the motion was reviewable under the standards provided by the postconviction statutes. See *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12.

But Williams filed his petition well after the time prescribed by R.C. 2953.21(A)(2) had expired. The jurisdiction of a common pleas court to entertain a late postconviction petition is closely circumscribed: the petitioner must show either that he was unavoidably prevented from discovering the facts upon which his postconviction claim depends, or that his claim is predicated upon a new and retrospectively applicable right recognized by the United States Supreme Court since the time for filing his claim had expired; and he must show “by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found [him] guilty of the offense of which [he] was convicted.” R.C. 2953.23(A)(1).

The record does not, as it could not, demonstrate that, but for the claimed sentencing error, “no reasonable factfinder would have found [Williams] guilty of the offense[s] of which [he] was convicted.” R.C. 2953.23(A)(1)(b). Therefore, the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain Williams’s late postconviction claim.

Nor could the court have entertained Williams’s motion under the jurisdiction to correct a void judgment. *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-

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Ohio-5795, 856 N.E.2d 263, ¶ 18-19. The alleged allied-offenses error, even if demonstrated, would not have rendered Williams's convictions void. *See State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 3 (holding that an allied-offenses challenge may be forfeited).

Because the common pleas court had no jurisdiction to entertain Williams's postconviction motion, his motion was subject to dismissal. *See* R.C. 2953.21(C) and 2953.23(A). Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment appealed from to reflect the dismissal of the motion. And we affirm the judgment as modified.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on April 27, 2016
per order of the court. _____.

Presiding Judge