

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

STATE OF OHIO,	:	APPEAL NO. C-150502
	:	TRIAL NOS. B-1103448
Plaintiff-Appellee,	:	B-1104473
vs.	:	<i>JUDGMENT ENTRY.</i>
YVONNE ALEXANDER,	:	
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 Yvonne Alexander appeals the Hamilton County Common Pleas Court’s judgment overruling her postconviction “Motion to Withdraw Guilty Plea Pursuant to Criminal Rule 32.1 * * * and Motion for Re-Sentencing.” We affirm the court’s judgment as modified.

Alexander was convicted in 2011 upon guilty pleas to multiple counts of theft in the case numbered B-1103448 and a single count of Medicaid fraud in the case numbered B-1104473. We affirmed her convictions on appeal. *State v. Alexander*, 1st Dist. Hamilton Nos. C-110828 and C-110829, 2012-Ohio-3349.

In 2015, Alexander filed with the common pleas court a “Motion to Withdraw Guilty Plea Pursuant to Criminal Rule 32.1 * * * and Motion for Re-Sentencing,” seeking relief on the grounds that the trial court had violated R.C. 2929.14(C)(2) in imposing consecutive sentences without making and journalizing findings and had denied her the protections of the Double Jeopardy Clause of the Fifth Amendment to the United States

Constitution by convicting her of theft and Medicaid fraud based on the same facts, and that her trial counsel had been ineffective concerning those matters. In this appeal from the overruling of those motions, Alexander presents three assignments of error that essentially challenge the denial of relief on those grounds. We overrule the assignments of error, because the common pleas court had no jurisdiction to grant that relief.

The common pleas court had no jurisdiction to grant Alexander's Crim.R. 32.1 motion to withdraw her guilty pleas, because we had, in her direct appeal, affirmed her convictions based upon those pleas. *See State ex rel. Special Prosecutors v. Judges*, 55 Ohio St.2d 94, 97-98, 378 N.E.2d 162 (1978). *Accord State v. Ketterer*, 140 Ohio St.3d 400, 2014-Ohio-3973, 18 N.E.3d 1199; *State v. Akemon*, 1st Dist. Hamilton No. C-080443, 2009-Ohio-3728.

The common pleas court also had no jurisdiction to grant the relief sought in Alexander's motion for resentencing. Because the motion did not designate a statute or rule under which the relief sought might be granted, the court was free to "recast" the motion "into whatever category necessary to identify and establish the criteria by which the motion should be judged." *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12 and syllabus. R.C. 2953.21 et seq., governing the proceedings upon a petition for postconviction relief, 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." R.C. 2953.21(J). But Alexander's consecutive-sentences-findings challenge was not reviewable under the postconviction statutes, because it sought relief based upon a deprivation of a statutory, rather than a constitutional, right. *See* R.C. 2953.21(A)(1); *State v. Powell*, 90 Ohio App.3d 260, 264, 629 N.E.2d 13 (1st Dist.1993). And while her double-jeopardy and ineffective-counsel claims, alleging violations of the Fifth, Sixth, and Fourteenth Amendments, were reviewable under the standards provided by the postconviction statutes, those claims did not satisfy the jurisdictional requirements for late postconviction claims. *See* R.C. 2953.23(A)(1)(b).

Nor could the common pleas court have entertained Alexander's claims under its jurisdiction to correct a void judgment. *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶ 18-19. Her convictions would not have been rendered void by the alleged consecutive-sentences-findings error or double-jeopardy violation, or by trial counsel's alleged ineffectiveness. *See State v. Krisha*, 11th Dist. Lake Nos. 2015-L-125, 2015-L-126 and 2015-L-127, 2016-Ohio-3512, ¶ 21-22; *State v. Wolfe*, 5th Dist. Delaware No. 16CAA020008, 2016-Ohio-4616, ¶ 22; *State v. Bowshier*, 2d Dist. Clark No. 2015-CA-53, 2016-Ohio-1416, ¶ 16 (citing *State v. Holdcroft*, 137 Ohio St.3d 526, 2013-Ohio-5014, 1 N.E.3d 382, ¶ 8, to hold that sentences are not void for lack of R.C. 2929.14(C)(4) consecutive-sentences findings); *Risner v. Ohio Dept. of Natural Resources*, 144 Ohio St.3d 278, 2015-Ohio-3731, 42 N.E.3d 718, ¶ 27 (holding that a double-jeopardy challenge may be forfeited); *Strickland v. Alexander*, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989) (holding that a conviction may be reversed for ineffective assistance of counsel only upon proof of an outcome-determinative deficiency in counsel's performance).

Because the common pleas court had no jurisdiction to entertain Alexander's postconviction motions, the motions were 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 motions. 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.

FISCHER, P.J., DEWINE and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on August 31, 2016
per order of the court. _____.

Presiding Judge