

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

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|-----------------------|---|------------------------|
| STATE OF OHIO,        | : | APPEAL NO. C-060890    |
|                       | : | TRIAL NOS. B-9702093   |
| Respondent-Appellee,  | : | B-9605626              |
| vs.                   | : | <i>JUDGMENT ENTRY.</i> |
| STEVEN GRIFFIN,       | : |                        |
| Petitioner-Appellant. | : |                        |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Petitioner-appellant Steven Griffin presents on appeal two assignments of error that essentially challenge the common pleas court’s judgment overruling his petition for postconviction relief. We affirm the court’s judgment.

Griffin was convicted in 1997 upon guilty pleas to attempted murder and possession of cocaine. He unsuccessfully challenged his convictions in direct appeals to this court and, subsequently, in a series of collateral challenges.

On November 14, 2005, Griffin filed with the common pleas court a “Motion for the Vacating and Correction of Sentence.” In his motion, he cited the United States Supreme Court’s decisions in *Apprendi v. New Jersey*<sup>2</sup> and *Blakely v. Washington*<sup>3</sup> in support of his contention that the trial court, by sentencing him to consecutive and nonminimum prison terms, had denied him the right to a jury trial guaranteed under the Sixth Amendment to the United States Constitution. The court overruled the motion, and Griffin appeals.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

<sup>2</sup> (2000), 530 U.S. 466, 120 S.Ct. 2348.

<sup>3</sup> (2004), 542 U.S. 296, 124 S.Ct. 2531.

Griffin failed to specify in his motion the statute or rule under which he sought relief. R.C. 2953.21 et seq., which govern 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.”<sup>4</sup> Therefore, the common pleas court, faced with Griffin’s collateral attack upon his sentences, should have recast his motion as a postconviction petition and reviewed it under the standards provided by R.C. 2953.21 et seq.<sup>5</sup>

Nevertheless, the court properly denied Griffin’s motion. Griffin filed this, his second postconviction petition, well after the time afforded under R.C. 2953.21(A)(2). And R.C. 2953.23 precluded the common pleas court from entertaining his tardy and successive postconviction challenge to his sentences, because Griffin did not, as he could not, demonstrate that “but for [the alleged Sixth Amendment violations], no reasonable factfinder would have found [him] guilty of the offense[s] of which [he had been] convicted.”<sup>6</sup>

Because Griffin failed to satisfy the time strictures of R.C. 2953.21 and the jurisdictional requirements of R.C. 2953.23, the common pleas court had no jurisdiction to entertain his “Motion for the Vacating and Correction of Sentence.” We, therefore, hold that the court properly overruled the motion. Accordingly, we overrule the assignments of error and affirm the judgment of the court below.

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.

**HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on November 21, 2007

per order of the Court \_\_\_\_\_  
Presiding Judge

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<sup>4</sup> R.C. 2953.21(J).

<sup>5</sup> See *State v. Bush*, 96 Ohio St.3d 235, 2002-Ohio-3993, 773 N.E.2d 522, at ¶10.

<sup>6</sup> R.C. 2953.23(A)(1)(b); see *State v. Connors*, 1st Dist. No. C-040677, 2005-Ohio-2644.