

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

STATE OF OHIO,	:	APPEAL NO. C-060947
	:	TRIAL NO. B-0200749
Respondent-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
LOUIS MCRAE,	:	
Petitioner-Appellant.	:	

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

Petitioner-appellant Louis McRae presents a single assignment of error that essentially challenges the Hamilton County Common Pleas Court's judgment denying his postconviction petition. We affirm the court's judgment.

McRae was convicted in 2002 upon guilty pleas to aggravated robbery and an accompanying firearm specification. He took no direct appeal from his conviction. Instead, in October of 2006, he filed with the common pleas court a petition for postconviction relief under R.C. 2953.21 et seq. In his petition, he cited the United States Supreme Court's decisions *Apprendi v. New Jersey*² and *Blakely v. Washington*³ and the Ohio Supreme Court's decision in *State v. Foster*⁴ in support of his contention that the trial court, by sentencing him to nonminimum and

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

² (2000), 530 U.S. 466, 120 S.Ct. 2348.

³ (2004), 542 U.S. 296, 124 S.Ct. 2531.

⁴ 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

consecutive prison terms, had denied him the right to a jury trial guaranteed under the Sixth Amendment to the United States Constitution. The common pleas court denied the petition.

We hold that the court properly denied the petition. McRae filed his petition well after the time afforded under R.C. 2953.21(A)(2) to mount a collateral attack upon his judgment of conviction. And R.C. 2953.23 precluded the common pleas court from entertaining his tardy postconviction challenge to his sentence, because McRae 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 of which [he had been] convicted.”⁵

Because McRae 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 tardy postconviction petition. We, therefore, overrule the assignment of error and affirm the court’s judgment.

Further, 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.

PAINTER, P.J., HILDEBRANDT and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on September 12, 2007

per order of the Court _____
Presiding Judge

⁵ R.C. 2953.23(A)(1)(b); see *State v. Connors*, 1st Dist. No. C-040677, 2005-Ohio-2644, in which we held that R.C. 2953.23 precludes a common pleas court from entertaining a *Blakely* challenge to a sentence presented in a tardy postconviction petition by a noncapital petitioner.