

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

STATE OF OHIO,	:	APPEAL NO. C-110054
	:	TRIAL NOS. B-0506040A
Plaintiff-Respondent-Appellee,	:	B-0600264A
	:	B-0602212
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
JAMES MARSHALL,	:	
	:	
Defendant-Petitioner-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. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Defendant-petitioner-appellant James Marshall presents on appeal two assignments of error that, when reduced to their essence, challenge the Hamilton County Common Pleas Court's judgment overruling Marshall's Crim.R. 33(B) motion for leave to file a motion for a new trial and denying his petition under R.C. 2953.21 et seq. for postconviction relief. We affirm the court's judgment.

The court had before it competent and credible evidence to support its determination that Marshall had failed to demonstrate by clear and convincing evidence that he had been unavoidably prevented from timely discovering, and from advancing in his new-trial motion, his claim of actual innocence. Therefore, the court properly overruled Marshall's motion for leave to file a new-trial motion. See *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74, 564 N.E.2d 54; *State v. Hawkins*, 1st Dist. No. C-110291, 2011-Ohio-5645, ¶14.

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Because Marshall did not satisfy either the time restrictions of R.C. 2953.21(A)(2) or the jurisdictional requirements of R.C. 2953.23, R.C. 2953.21 et seq. did not confer jurisdiction on the court to entertain Marshall's postconviction petition. Therefore, the court properly declined to entertain the petition.

And while a trial court retains jurisdiction to correct a void judgment, see *State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-Ohio-5795, 856 N.E.2d 263, ¶18-19, Marshall's claim of actual innocence, even if demonstrated, would not have rendered his judgment of conviction void.

We, therefore, overrule the assignments of error. Because the common pleas court had no jurisdiction to entertain Marshall's postconviction claim, his petition 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 a dismissal of the petition. And we affirm the judgment as modified.

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

SUNDERMANN, P.J., CUNNINGHAM and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on December 9, 2011
per order of the court _____.
Presiding Judge