

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

STATE OF OHIO,	:	APPEAL NO. C-110129
Respondent-Appellee,	:	TRIAL NO. B-0506298
vs.	:	<i>JUDGMENT ENTRY.</i>
DAVID RENDER,	:	
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.

Petitioner-appellant David Render presents on appeal a single assignment of error challenging the Hamilton County Common Pleas Court's judgment denying his postconviction petition. We overrule the assignment of error because the common pleas court had no jurisdiction to entertain the petition.

Render was convicted in 2006 upon no-contest pleas to charges of resisting arrest, having weapons under a disability, and carrying a concealed weapon. He unsuccessfully sought relief from his convictions in an appeal to this court, see *State v. Render*, 1st Dist. No. C-060382, 2007-Ohio-1606, appeal not accepted for review, 115 Ohio St.3d 1411, 2007-Ohio-4884, 873 N.E.2d 1316, in a motion to withdraw his no-contest pleas, and in a petition seeking postconviction relief pursuant to R.C. 2953.21 et seq. It is from the denial of his postconviction petition that he now appeals.

R.C. 2953.21 et seq. did not confer jurisdiction on the common pleas court to entertain Render's postconviction petition because he did not satisfy either the time

restrictions of R.C. 2953.21(A)(2) or the jurisdictional requirements of R.C. 2953.23. Render filed his petition well after the time afforded under R.C. 2953.21(A)(2) had expired. He could not be said to have been denied a fair trial by the state's failure to disclose in discovery certain statements contained in police reports, when the statements were not "material" in the sense that they could "reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Kyles v. Whitley* (1995), 514 U.S. 419, 434-436, 115 S.Ct. 1555. Therefore, R.C. 2953.23 precluded the common pleas court from entertaining Render's tardy petition, when he failed to demonstrate that "but for" the alleged discovery violation, "no reasonable factfinder would have found [him] guilty of the offense[s] of which [he] was convicted." R.C. 2953.23(A)(1)(b).

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, the claimed discovery violation, even if demonstrated, would not have rendered Render's judgment of conviction void.

Because the common pleas court had no jurisdiction to entertain Render's petition, the 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.

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

To the Clerk:

Enter upon the Journal of the Court on November 30, 2011

per order of the Court _____
Presiding Judge