

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

STATE OF OHIO,	:	APPEAL NO. C-140474
Respondent-Appellee,	:	TRIAL NO. B-0601549
vs.	:	<i>JUDGMENT ENTRY.</i>
DAVID HOPPER,	:	
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. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Petitioner-appellant David Hopper appeals from the Hamilton County Common Pleas Court's judgment denying his postconviction petition. We affirm the court's judgment as modified.

Hopper was convicted in 2010 upon guilty pleas to rape, attempted rape, kidnapping, and aggravated robbery. He did not appeal his convictions. He instead filed, in 2010, a motion to withdraw his guilty pleas and, in 2014, a petition under R.C. 2953.21 et seq. for postconviction relief.

In this appeal, Hopper advances two assignments of error, contending that the common pleas court erred in failing to conduct a hearing and in declining to entertain his 2014 postconviction petition. We overrule the assignments of error upon our determination that the common pleas court lacked jurisdiction to entertain Hopper's postconviction claims.

In his petition, Hopper sought relief from his convictions on the grounds that his prosecution had commenced well after the limitations period set by R.C. 2901.13 had run, the assistant prosecuting attorney's misrepresentations concerning the limitations period had denied him a fair trial, trial counsel had been ineffective concerning his limitations defense and the alleged prosecutorial misconduct and in investigating his psychological history, and the trial court had not complied with Crim.R. 11 in accepting his guilty pleas.

Hopper filed his petition well after the time prescribed by R.C. 2953.21(A)(2) had expired. The jurisdiction of a common pleas court to entertain a late postconviction petition is closely circumscribed: the petitioner must show either that he was unavoidably prevented from discovering the facts upon which his postconviction claim depends, or that his claim is predicated upon a new and retrospectively applicable right recognized by the United States Supreme Court since the time for filing his claim had expired; and he must show "by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found [him] guilty of the offense of which [he] was convicted * * *." R.C. 2953.23(A)(1).

The record does not demonstrate that, but for the statute-of-limitations violation, the alleged prosecutorial misconduct, trial counsel's alleged ineffectiveness, or the alleged Crim.R. 11 deficiencies, "no reasonable factfinder would have found [Hopper] guilty of the offense[s] of which [he] was convicted." R.C. 2953.23(A)(1)(b). Therefore, the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain Hopper's late postconviction claims.

And while a court always has 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 alleged statutory and rule violations and constitutional deprivations, even if

demonstrated, would not have rendered Hopper's convictions void. *See State v. Wurzelbacher*, 1st Dist. Hamilton No. C-130011, 2013-Ohio-4009, ¶ 8; *State v. Grant*, 1st Dist. Hamilton No. C-120695, 2013-Ohio-3421, ¶ 9-16 (holding that a judgment of conviction is void only to the extent that a sentence is unauthorized by statute or does not include a statutorily mandated term or if the trial court lacks subject-matter jurisdiction or the authority to act); *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998) (holding that the failure to commence a criminal prosecution within the R.C. 2901.13 limitations period does not divest a trial court of jurisdiction).

Because the common pleas court had no jurisdiction to entertain Hopper's postconviction claims, his petition was subject to dismissal. *See* R.C. 2953.21(C) and 2953.23(A). And because the petition was subject to dismissal, Hopper was not entitled to an evidentiary hearing. *See* R.C. 2953.21(C).

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 constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

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

To the clerk:

Enter upon the journal of the court on March 9, 2016

per order of the court _____
Presiding Judge