

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

STATE OF OHIO,	:	APPEAL NOS. C-170399
	:	C-170405
Plaintiff-Appellee,	:	TRIAL NO. B-8802582
vs.	:	<i>JUDGMENT ENTRY.</i>
LEWIS THOMAS III,	:	
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Lewis Thomas III appeals from the Hamilton County Common Pleas Court’s judgment overruling his postconviction motion seeking a “Writ of Error Pursuant to [R.C.] 2945.831 and Crim.R. 52(B) Review of Trial Court Errors.” We dismiss the case numbered C-170405 as duplicative of the case numbered C-170399. In the case numbered C-170399, we affirm the common pleas court’s judgment as modified to dismiss the motion for lack of jurisdiction.

Thomas was convicted in 1988 of aggravated murder, aggravated robbery, and felonious assault. He unsuccessfully challenged his convictions on direct appeal and in postconviction proceedings filed between 1990 and 2016. *See State v. Thomas*, 1st Dist. Hamilton No. C-880637, 1990 WL 37787 (Apr. 4, 1990), *appeal not accepted*, 54 Ohio St.3d 713, 526 N.E.2d 159 (1990); *State v. Thomas*, 1st Dist. Hamilton No. C-910145 (Feb. 14, 1992); *State v. Thomas*, 1st Dist. Hamilton No. C-050245, 2005-Ohio-6823; *State v. Thomas*, 1st Dist. Hamilton No. C-060355 (May 2, 2007); *State v. Thomas*,

2017-Ohio-4403, 93 N.E.3d 227 (1st Dist.), *delayed appeal denied*, 150 Ohio St.3d 1450, 2017-Ohio-8136, 83 N.E.3d 937.

In this appeal, Thomas presents nine assignments of error. The assignments of error essentially restate the grounds for relief advanced in his 2016 motion for a “Writ of Error Pursuant to [R.C.] 2945.831 and Crim.R. 52(B) Review of Trial Court Errors” and thus may fairly be read to challenge the common pleas court’s failure to grant the relief sought in that motion on those grounds. We address the assignments of error together, and we overrule them upon our determination that the common pleas court had no jurisdiction to grant that relief.

Thomas did not designate in his motion a statute or rule under which the postconviction relief sought may be afforded, leaving the common pleas court to “recast” the motion “into whatever category necessary to identify and establish the criteria by which the motion should be judged.” *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12 and syllabus. Because Thomas sought relief from his convictions based on alleged constitutional violations during the proceedings resulting in his convictions, his motion was reviewable under the standards provided by R.C. 2953.21 et seq., governing the proceedings upon a petition for postconviction relief. *See* R.C. 2953.21(A)(1)(a).

But those statutes did not confer upon the common pleas court jurisdiction to entertain Thomas’s claims. He filed his motion well after the time prescribed by R.C. 2953.21(A)(2) had expired. And he failed to satisfy the jurisdictional requirements for entertaining late postconviction claims, when the record does not demonstrate that, but for the claimed constitutional violations, “no reasonable factfinder would have found [him] guilty of the offense[s] of which [he] was convicted.” *See* R.C. 2953.23(A)(1)(b).

Nor were Thomas’s convictions subject to correction under the jurisdiction to correct a void judgment. *See State ex rel. Cruzado v. Zaleski*, 111 Ohio St.3d 353, 2006-

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Ohio-5795, 856 N.E.2d 263, ¶ 18-19. The alleged constitutional deprivations, even if demonstrated, would not have rendered his convictions void. *See Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 14-15 (noting the “traditional[]” rule that, except with certain sentencing errors, a judgment is not void unless “a court acts without subject-matter jurisdiction”); *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). *See also Midling v. Perrini*, 14 Ohio St.2d 106, 107, 236 N.E.2d 557 (1968) (holding that defects in an indictment do not render a conviction void); *State v. Hayes*, 1st Dist. Hamilton No. C-130450, 2014-Ohio-1263, ¶ 5 (holding that ineffective assistance of counsel does not render a conviction void).

Because the common pleas court had no jurisdiction to entertain the claims advanced in Thomas’s motion, the motion was subject to dismissal without an evidentiary hearing. *See* R.C. 2953.21(D) and 2953.23(A). Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment appealed from to reflect the dismissal of the motion. 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.

**MOCK, P.J., CUNNINGHAM and MILLER, JJ.**

To the clerk:

Enter upon the journal of the court on September 7, 2018,  
per order of the court\_\_\_\_\_.

Presiding Judge