

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

STATE OF OHIO,	:	APPEAL NO. C-170588
Plaintiff-Appellee,	:	TRIAL NO. B-0508457
vs.	:	<i>JUDGMENT ENTRY.</i>
CAMERON MCGLOTHIN,	:	
Defendant-Appellant.	:	

We consider this appeal 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 Cameron McGlothin appeals the Hamilton County Common Pleas Court’s judgment overruling his postconviction “Motion to Vacate and Correct an Illegal/Void Sentence.” Because the court had no jurisdiction to grant the relief sought in that motion, we affirm the judgment as modified to dismiss the motion.

McGlothin was convicted of murder, aggravated robbery, and having weapons under a disability. We affirmed those convictions on direct appeal and affirmed the overruling of his 2008 postconviction motion challenging the convictions. *See, e.g., State v. McGlothin*, 1st Dist. Hamilton No. C-100727 (Aug. 26, 2011); *State v. McGlothin*, 1st Dist. Hamilton No. C-080956 (Aug. 28, 2009); *State v. McGlothin*, 1st Dist. Hamilton No. C-060145, 2007-Ohio-4707.

In his 2017 “Motion to Vacate and Correct an Illegal/Void Sentence,” McGlothlin challenged the trial court’s failure to merge his murder and aggravated-robbery offenses under R.C. 2941.25 and the use of his prior juvenile-delinquency adjudication to prove his weapons-under-disability offense. In this appeal, he advances a single assignment of error challenging the common pleas court’s denial of relief on those grounds. We overrule the assignment of error upon our determination that the court had no jurisdiction to grant that relief.

McGlothlin did not designate in his motion a statute or rule under which the common pleas court may have afforded the relief sought. The court was thus left 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.

A common pleas court may grant relief from a conviction under R.C. 2953.21 et seq., governing the proceedings upon a petition for postconviction relief, upon proof of a constitutional violation during the proceedings resulting in the conviction. *See* R.C. 2953.21(A)(1). R.C. 2941.25, governing the matter of sentencing on multiple counts charged in the same indictment, effectuates the protections against multiple punishments for the same offense secured under the Double Jeopardy Clauses of the Fifth Amendment to the United States Constitution and Article I, Section 10, of the Ohio Constitution. *State v. Payne*, 1st Dist. Hamilton No. C-790257, 1980 WL 352849 (May 28, 1980). Thus, McGlothlin’s claim in his motion that his murder and aggravated-robbery offenses were subject to merger under R.C. 2941.25 was reviewable by the common pleas court under the standards provided by the postconviction statutes.

But the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain McGlothin's merger claim. 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 a late postconviction claim, when the record does not, as it could not, demonstrate that, but for the claimed sentencing error, "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).

The common pleas court also lacked jurisdiction to entertain McGlothin's challenge in his motion to the use of his prior juvenile-delinquency adjudication to prove his weapons-under-disability offense. That claim was not reviewable under the standards provided by the postconviction statutes, because it sought relief based on an alleged statutory, rather than constitutional, violation. *See State v. Carnes*, ___ Ohio St.3d ___, 2018-Ohio-3256, ___ N.E.3d ___, ¶ 21 (holding that using a prior juvenile adjudication to prove the R.C. 2923.13(A)(2) weapons-under-disability offense does not violate the due-process guarantees of the state or federal constitution). Nor was the claim reviewable under the postconviction procedures provided by any other statute or rule. *See State v. Cobia*, 1st Dist. Hamilton No. C-160256, 2016-Ohio-7213, ¶ 9-14.

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. And a judgment of conviction is void 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 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. *See also Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992

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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”). By that definition, McGlothin’s postconviction claims, even if demonstrated, would not have rendered his convictions void. *See State v. Williams*, 148 Ohio St.3d 403, 2016-Ohio-7658, 71 N.E.3d 234, ¶ 22-29 (holding that sentences imposed for multiple counts are void only when the sentencing court determined that R.C. 2941.25 required merger, but then imposed separate sentences in disregard of its own ruling). Therefore, McGlothin’s convictions were not subject to correction under the jurisdiction to correct a void judgment.

Because the common pleas court had no jurisdiction to entertain McGlothin’s “Motion to Vacate and Correct an Illegal/Void Sentence,” the motion 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 the dismissal of the motion. And we affirm the judgment as modified.

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.

CUNNINGHAM, P.J., MYERS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on December 21, 2018

per order of the court_____.

Presiding Judge