

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

STATE OF OHIO,	:	APPEAL NOS. C-160214
		C-160213
Plaintiff-Appellee,	:	TRIAL NOS. B-1208461-A
		B-1302771-A
vs.	:	
ROBERT DUDLEY,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider these consolidated 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 Robert Dudley appeals the Hamilton County Common Pleas Court’s judgments overruling his “Motion for Jail-Time Credit” and “Motion[s] to Correct Illegal Sentence.” We affirm those judgments.

In 2013, Dudley was convicted of kidnapping in the case numbered B-1302771-A and assault in the case numbered B-1208461-A. We affirmed his kidnapping conviction on direct appeal. *State v. Dudley*, 1st Dist. Hamilton No. C-130526 (Dec. 5, 2014), *appeals not allowed*, 142 Ohio St.3d 1466, 2015-Ohio-1896, 30 N.E.3d 975. He did not appeal his assault conviction.

In 2015, Dudley filed in his kidnapping case a “Motion for Jail-Time Credit” against his kidnapping sentence. And he filed in his kidnapping case and in his assault case a “Motion to Correct Illegal Sentence,” challenging the trial court’s failure to merge his kidnapping and assault convictions, and a “[Petition for a] Writ of Mandamus.” In

these appeals from the entries overruling his “Motion for Jail-Time Credit” and “Motion[s] to Correct Illegal Sentence,” he presents four assignments of error.

We overrule the first assignment of error, challenging the overruling of Dudley’s “Motion for Jail-Time Credit.” The common pleas court did not abuse its discretion in overruling the motion, because Dudley failed to demonstrate that the trial court had credited him with too few days. *See* R.C. 2929.19(B)(2)(g)(iii).

We address together Dudley’s second and third assignments of error, challenging the overruling of his “Motion[s] to Correct Illegal Sentence.” We overrule the assignments of error, because the common pleas court had no jurisdiction to entertain his claim that his kidnapping and assault convictions were subject to merger under R.C. 2941.25.

Dudley’s “Motion[s] to Correct Illegal Sentence” sought relief based on an alleged constitutional violation in the proceedings leading to his convictions. Therefore, they were reviewable by the common pleas court under the standards provided by the postconviction statutes. *See* R.C. 2953.21(A)(1); *State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12 and syllabus. But the postconviction statutes did not confer upon the court jurisdiction to entertain Dudley’s late merger claim. He filed his motions 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).

Nor were Dudley’s convictions subject to correction under the court’s 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. His merger challenge, even if demonstrated, would not have rendered his convictions void. *See State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 3 (holding that a merger challenge may be forfeited).

Finally, we have no jurisdiction to entertain Dudley's challenge in his fourth assignment of error to the common pleas court's dismissal of his "[Petitions for a] Writ of Mandamus." This court has jurisdiction to review only the judgments from which Dudley appeals. In those judgments, the common pleas court overruled Dudley's "Motion for Jail-Time Credit" and "Motion[s] to Correct Illegal Sentence." In overruling those motions, the court did not rule upon, because Dudley had not asserted in the motions, his mandamus claim. *See State v. Gipson*, 1st Dist. Hamilton Nos. C-960867 and C-960881, 1997 WL 598397 (Sept. 26, 1997). Thus, we do not reach the merits of his challenge on appeal to the common pleas court's failure to grant the relief sought in his mandamus petitions.

Upon our determination that the common pleas court did not abuse its discretion in overruling Dudley's "Motion for Jail-Time Credit," we affirm that judgment in the case numbered C-160213.

Because the court had no jurisdiction to entertain Dudley's "Motion[s] to Correct Illegal Sentence," the motions were 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 judgments appealed from in the case numbered C-160214 to reflect the dismissal of those motions. And we affirm those judgments 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 MILLER, JJ.

To the clerk:

Enter upon the journal of the court on July 28, 2017
per order of the court _____.

Presiding Judge