

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

STATE OF OHIO,	:	APPEAL NOS. C-160401
		C-160396
Plaintiff-Appellee,	:	TRIAL NO. B-0509627-A
vs.	:	
COURTNEY THOMPSON,	:	<i>JUDGMENT ENTRY.</i>
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 Courtney Thompson appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Correct Void Sentence.” We dismiss the case numbered C-160401 as duplicative of the case numbered C-160396. And in the case numbered C-160396, we affirm the court’s judgment as modified to dismiss the motion.

Thompson was convicted in 2006 upon guilty pleas to voluntary manslaughter and felonious assault. For those offenses and their accompanying firearm specifications, the trial court imposed jointly recommended consecutive prison terms totaling 19 years. Thompson did not appeal his convictions.

In his 2015 “Motion to Correct Void Sentence,” Thompson contended that R.C. 2929.14(D)(1)(b) and the Double Jeopardy Clauses of the Fifth Amendment to the

United States Constitution and Article I, Section 10, of the Ohio Constitution required merger of the firearm specifications accompanying his offenses, rendering the sentences imposed for those specifications subject to correction as void. In this appeal, he presents two assignments of error that, distilled to their essence, challenge the overruling of that motion. We overrule the assignments of error, upon our determination that the common pleas court had no jurisdiction to entertain the motion.

Thompson did not designate in his motion a statute or rule under which the relief sought might have been 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. Thompson’s claims were reviewable by the common pleas court under the standards provided by R.C. 2953.21 et seq., governing the proceedings upon a petition for postconviction relief, because he sought in his motion resentencing based on an alleged constitutional violation during the proceedings resulting in his convictions. *See* R.C. 2953.21(A)(1); *State v. Powell*, 90 Ohio App.3d 260, 264, 629 N.E.2d 13 (1st Dist.1993).

But the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain Thompson’s motion. He filed the 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 errors, “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 Thompson'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-Ohio-5795, 856 N.E.2d 263, ¶ 18-19. The alleged merger error, even if demonstrated, would not have rendered his sentences void. *See 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).

Because the common pleas court had no jurisdiction to entertain Thompson's "Motion to Correct 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.

ZAYAS, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on November 15, 2017
per order of the court _____.
Presiding Judge