

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

STATE OF OHIO,	:	APPEAL NO. C-160504
	:	TRIAL NO. B-8801100
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
STEVE A. LAMB,	:	
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 Steve A. Lamb appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Correct Sentence.” We affirm the court’s judgment as modified.

Lamb was convicted in 1988 upon no-contest pleas to attempted aggravated murder, aggravated burglary, and rape. He did not appeal his convictions.

In 2015, Lamb filed with the common pleas court his “Motion to Correct Sentence.” In this appeal from the overruling of that motion, Lamb presents two assignments of error, contending that his offenses were subject to merger under R.C. 2941.25, and that his trial counsel had been ineffective in advising him to plead no contest to those offenses. We address the assignments of error together, because they essentially restate grounds for relief advanced in his motion and thus may fairly be read to

challenge the denial of relief on those grounds. We overrule the assignments of error, upon our determination that the common pleas court had no jurisdiction to entertain the motion.

Lamb did not designate in his motion a statute or rule under which the relief sought might have been afforded, leaving the common pleas court free 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); *State v. Powell*, 90 Ohio App.3d 260, 264, 629 N.E.2d 13 (1st Dist.1993). In his motion, Lamb sought resentencing based on alleged constitutional violations. His merger claim alleged a violation of R.C. 2941.25, which 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. *See State v. Payne*, 1st Dist. Hamilton No. C-790257, 1980 WL 352849 (May 28, 1980). And his ineffective-counsel claim alleged a deprivation of rights secured by the federal constitution’s Sixth Amendment and Article I, Section 10, of the state constitution. Consequently, those claims were 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 Lamb’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 demonstrate that, but for the claimed 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 Lamb’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. His ineffective-counsel challenge, even if demonstrated, would not have rendered his convictions void. *See State v. Hayes*, 1st Dist. Hamilton No. C-130450, 2014-Ohio-1263, ¶ 5. And the failure to merge his offenses cannot be said to have rendered his convictions void in the absence of some demonstration that the trial court had found that R.C. 2941.25 mandated merger. *See State v. Williams*, 148 Ohio St.3d 403, 2016-Ohio-7658, 71 N.E.3d 234, ¶ 26.

Because the common pleas court had no jurisdiction to entertain Lamb’s “Motion to Correct 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 September 22, 2017
per order of the court _____.

Presiding Judge