

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

STATE OF OHIO,	:	APPEAL NO. C-170002
Plaintiff-Appellee,	:	TRIAL NO. B-0102352
vs.	:	<i>JUDGMENT ENTRY.</i>
DEMPSEY DEJANETTE,	:	
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 Dempsey DeJanette appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Correct Void Sentence for the Failure to Comport with the Statutory Requirements of O.R.C. 2941.25.” We affirm the court’s judgment as modified to dismiss the motion for lack of jurisdiction.

DeJanette was convicted in 2001 upon jury verdicts finding him guilty of robbery and kidnapping. On direct appeal, we overruled assignments of error challenging the sufficiency and weight of the evidence to support his convictions and the imposition of separate and consecutive sentences, but we remanded for correction of postrelease control. *State v. DeJanette*, 1st Dist. Hamilton No. C-010693, 2002-Ohio-480, *appeal not accepted*, 98 Ohio St.3d 1424, 2003-Ohio-259, 782 N.E.2d 78.

In this appeal, from the overruling of his 2016 “Motion to Correct Void Sentence for the Failure to Comport with the Statutory Requirements of O.R.C. 2941.25,” DeJanette presents a single assignment of error, challenging the imposition of separate sentences for robbery and kidnapping. The assignment of error essentially restates the ground for relief advanced in his postconviction motion and thus may fairly be read to challenge the denial of relief on that ground. We overrule the assignment of error upon our determination that the common pleas court had no jurisdiction to entertain the motion.

In his motion, DeJanette did not specify 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. Under R.C. 2953.21 et seq., postconviction relief may be granted 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 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). Therefore, DeJanette’s merger claim 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 DeJanette’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 cannot, 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 DeJanette’s sentences 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. Those sentences are not void, because the sentencing court did not find 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 DeJanette’s “Motion to Correct Void Sentence for the Failure to Comport with the Statutory Requirements of O.R.C. 2941.25,” the motion was subject to dismissal. *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 shall constitute 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., ZAYAS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on June 29, 2018

per order of the court _____.

Presiding Judge