

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

STATE OF OHIO,	:	APPEAL NO. C-170464
Respondent-Appellee,	:	TRIAL NO. B-0009380
vs.	:	<i>JUDGMENT ENTRY.</i>
ANDREW BEVINS, JR.,	:	
Petitioner-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.

Petitioner-appellant Andrew Bevins, Jr., presents in this appeal three assignments of error challenging the Hamilton County Common Pleas Court's judgment denying his 2017 petition under R.C. 2953.21 et seq. for postconviction relief. We address together and overrule the assignments of error and affirm the court's judgment as modified to dismiss the petition for lack of jurisdiction.

Bevins was convicted of escape in 2003. He challenged his conviction in a direct appeal to this court and in a series of postconviction motions. *See State v. Bevins*, 1st Dist. Hamilton No. C-040052 (Feb. 23, 2005); *State v. Bevins*, 1st Dist. Hamilton No. C-120345, 2013-Ohio-156.

In his 2017 postconviction petition, Bevins asserted that his trial counsel had been constitutionally ineffective in failing to object to his conviction for escape as a second-degree felony, because he could only be convicted of the least degree of that offense when the verdict form did not, as required by R.C. 2945.75(A), state the degree of the offense. The postconviction statutes did not confer upon the common

pleas court jurisdiction to entertain the petition. Bevins filed the petition 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 petition, when he failed to demonstrate that, but for the alleged deficiency in trial counsel's performance, "no reasonable factfinder would have found [him] guilty of the offense of which [he] was convicted." *See* R.C. 2953.23(A)(1)(b).

Nor could the common pleas court have granted Bevins relief under its 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. Neither trial counsel's alleged ineffectiveness nor the alleged verdict-form defect, even if demonstrated, would have rendered Bevins's escape conviction void. *See State v. Hayes*, 1st Dist. Hamilton No. C-130450, 2014-Ohio-1263, ¶ 5 (holding that ineffective assistance of counsel does not render a conviction void); *State v. Ingles*, 1st Dist. Hamilton No. C-120238, 2013-Ohio-1460, ¶ 4-8 (holding that an R.C. 2945.75(A) verdict-form defect does not render a conviction void).

Because the common pleas court had no jurisdiction to entertain Bevins's postconviction petition, the petition 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 petition. And we affirm the judgment as modified.

A certified copy of this judgment entry constitutes 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., MYERS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on September 12, 2018,
per order of the court _____.

Presiding Judge