

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

STATE OF OHIO,	:	APPEAL NO. C-160919
Plaintiff-Appellee,	:	TRIAL NO. B-0706221-A
vs.	:	<i>JUDGMENT ENTRY.</i>
BYRON HARRINGTON,	:	
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 Byron Harrington appeals the Hamilton County Common Pleas Court’s judgment overruling his postconviction “Motion to Modify and/or Correct Sentence.” Because the court had no jurisdiction to grant the relief sought in that motion, we affirm the judgment as modified to dismiss the motion.

Harrington was convicted in 2008 upon jury verdicts finding him guilty on multiple counts of breaking and entering, receiving stolen property, and safecracking. We affirmed his convictions on appeal. *State v. Harrington*, 1st Dist. Hamilton Nos. C-080547 and C-080548, 2009-Ohio-5576, *appeal not allowed*, 124 Ohio St.3d 1478, 2010-Ohio-354, 921 N.E.2d 248.

In 2015, Harrington filed with the common pleas court his “Motion to Modify and/or Correct Sentence.” In this appeal from the overruling of that motion, Harrington presents two assignments of error, challenging the trial court’s failure to merge his offenses under R.C. 2941.25 and its failure to make the statutorily mandated findings for

imposing consecutive sentences. Because those assignments of error essentially restate grounds for relief advanced in Harrington's motion, we address them together. And we overrule them upon our determination that the common pleas court had no jurisdiction to grant relief on those grounds.

Harrington did not designate in his postconviction motion a statute or rule under which the relief sought may be afforded. Therefore, the common pleas court was left 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). R.C. 2941.25, governing the matter of 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). Thus, Harrington's claim in his motion that his offenses were subject to merger under R.C. 2941.25 was reviewable by the common pleas court under the standards provided by the postconviction statutes.

But those statutes did not confer upon the common pleas court jurisdiction to entertain Harrington's merger claim. He filed his 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 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).

The common pleas court also lacked jurisdiction to entertain Harrington's challenge in his motion to the trial court's failure to make consecutive-sentencing findings. That claim was not reviewable under the standards provided by the postconviction statutes, because it sought relief based on an alleged statutory, rather than constitutional, violation. *See State v. Littlepage*, 1st Dist. Hamilton Nos. C-170207 and C-170157, 2018-Ohio-2959, ¶ 5, citing *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, ¶ 26 (holding that sentencing findings are not constitutionally mandated). Nor could the relief sought in that claim have been afforded under any other postconviction procedure provided by statute or the criminal rules. *See Littlepage* at ¶ 5.

Finally, Harrington's sentences were not 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 sentences imposed for his multiple offenses were 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. Nor would those sentences have been rendered void by the absence of consecutive-sentencing findings. *See Littlepage* at ¶ 12.

Because the common pleas court had no jurisdiction to entertain Harrington's motion, 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.

**CUNNINGHAM, P.J., ZAYAS and MYERS, JJ.**

To the clerk:

Enter upon the journal of the court on August 22, 2018  
per order of the court \_\_\_\_\_  
Presiding Judge