

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

|                      |   |                        |
|----------------------|---|------------------------|
| STATE OF OHIO,       | : | APPEAL NO. C-170081    |
|                      | : | TRIAL NO. B-0900625    |
| Plaintiff-Appellee,  | : |                        |
| vs.                  | : | <i>JUDGMENT ENTRY.</i> |
| JEFF STRONG,         | : |                        |
| 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 Jeff Strong presents on appeal a single assignment of error challenging the Hamilton County Common Pleas Court’s judgment dismissing his “Motion for Relief from Judgment Civ.R. 60/Crim.R. 57 and Alternative Motion for Appointment of Expert Witness.” We overrule the assignment of error and affirm the court’s judgment.

In 2010, following a trial to the court, Strong was convicted of two counts of rape and a single count of kidnapping. He unsuccessfully challenged his convictions on direct appeal and in postconviction motions filed in 2010 and 2014. *See State v. Strong*, 1st Dist. Hamilton Nos. C-100484 and C-100486, 2011-Ohio-4947, *delayed appeal denied*, 132 Ohio St.3d 1511, 2012-Ohio-4021, 974 N.E.2d 110.

In the 2014 motion from which this appeal derives, Strong sought relief from his convictions under Civ.R. 60(B), upon the authority of Crim.R. 57(B), on the ground that he had been incompetent to stand trial. Civ.R. 60(B) governs the proceedings upon a motion seeking relief from a judgment entered in a civil action, and Crim.R. 57(B)

permits a court in a criminal matter to “look to the rules of civil procedure \* \* \* if no rule of criminal procedure exists.” But Strong sought relief based on the constitutionally secured principles of fundamental fairness and due process that protect a legally incompetent criminal defendant from being tried or convicted. *See Pate v. Robinson*, 383 U.S. 375, 378, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966); *State v. Berry*, 72 Ohio St.3d 354, 359, 650 N.E.2d 433 (1995). And R.C. 2953.21 et seq. and Crim.R. 35 govern the proceedings upon a postconviction petition seeking relief from a conviction based on an alleged constitutional violation. *See* R.C. 2953.21(A)(1).

Strong’s failure to designate in his motion a statute or rule under which the relief sought might have been afforded left 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.” *See State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12 and syllabus. Because the motion sought relief based on an alleged constitutional violation, Crim.R. 57(B) did not authorize the court to review the motion under the standards provided by Civ.R. 60(B), and the court properly reviewed the motion under the postconviction statutes. *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 Strong’s competency challenge. He filed his motion well after the time prescribed by R.C. 2953.21 had expired. And he did not satisfy the jurisdictional requirements for a late postconviction petition, because the record does not, as it could not, demonstrate that but for the alleged constitutional violation, “no reasonable factfinder would have found [him] guilty of the offense[s] of which [he] was convicted.” *See* R.C. 2953.23(A)(1).

Nor did the postconviction statutes permit the common pleas court to afford Strong the “alternative” relief sought in his motion. Because his postconviction competency claim was subject to dismissal for lack of jurisdiction, Strong was not entitled to discovery, or the funding for experts to aid in discovery, to support that claim.

*See State v. Byrd*, 145 Ohio App.3d 318, 332-333, 762 N.E.2d 1043 (1st Dist.2001) (holding that the common pleas court properly denied discovery to support petitioner's postconviction claim, because the postconviction statutes did not contemplate discovery in the initial stages of a postconviction proceeding, and the court lacked jurisdiction to entertain the successive petition); *see also* R.C. 2953.21(A)(1) (effective April 6, 2017, providing, in the initial stages of a postconviction proceeding, discovery to a petitioner who has been sentenced to death).

Finally, Strong's convictions were not subject to correction under the court's 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 constitutional violation, even if demonstrated, would not have rendered his convictions void. *See State v. Wurzelbacher*, 1st Dist. Hamilton No. C-130011, 2013-Ohio-4009, ¶ 8; *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 Strong's postconviction competency challenge, the court did not err either in denying discovery to support that claim or in dismissing his motion. Accordingly, we affirm the court's judgment.

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 January 26, 2018  
per order of the court \_\_\_\_\_.

Presiding Judge