

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

STATE OF OHIO,	:	APPEAL NO. C-170113
	:	TRIAL NO. B-06010711
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
DAVID E. NORTH,	:	
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 David E. North appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Vacate or Set Aside Sentence.” We affirm the court’s judgment as modified to dismiss the motion for lack of jurisdiction.

North was convicted in 2008 upon pleas of no contest to aggravated robbery, kidnapping, felonious assault, and menacing by stalking. On appeal, we twice remanded for resentencing in conformity with R.C. 2941.25, but otherwise affirmed his convictions. *See State v. North*, 1st Dist. Hamilton No. C-080322 (May 13, 2009), *appeal not accepted*, 123 Ohio St.3d 1423, 2009-Ohio-5340, 914 N.E.2d 1064; *State v. North*, 1st Dist. Hamilton No. C-090406, 2010-Ohio-2766, *appeal not accepted*, 126 Ohio St.3d 1601, 2010-Ohio-4928, 935 N.E.2d 47.

In May 2016, North filed with the common pleas court his “Motion to Vacate or Set Aside Sentence.” In his motion, North contended that the trial court’s failure to give proper consideration to the principles and purposes of sentencing set forth in R.C. 2929.11 and 2929.12 denied him rights secured under the Eighth and Fourteenth Amendments to the United States Constitution.

In this appeal, North presents three assignments of error. The assignments of error essentially restate the grounds for relief advanced in his motion and may thus fairly be read to challenge the overruling of his motion. We overrule the assignments of error upon our determination that the common pleas court had no jurisdiction to entertain the motion.

North did not designate in his motion a statute or rule under which the relief sought may be 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. North’s claims were reviewable by the common pleas court under the standards provided by R.C. 2953.21 et seq., governing the proceedings upon a petition for postconviction relief, because he sought in his motion resentencing based on alleged constitutional violations during the proceedings resulting in his convictions. *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 North’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, because it cannot, demonstrate that, but for the claimed sentencing 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 North’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. The alleged sentencing errors, even if demonstrated, would not have rendered his sentences 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 North’s “Motion to Vacate or Set Aside 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.

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

To the clerk:

Enter upon the journal of the court on July 27, 2018

per order of the court _____
Presiding Judge