

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

STATE OF OHIO,	:	APPEAL NO. C-170563
Respondent-Appellee,	:	TRIAL NOS. B-9905996 B-9907787
vs.	:	<i>JUDGMENT ENTRY.</i>
JOSEPH FEATHERKILE,	:	
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 Joseph Featherkile appeals the Hamilton County Common Pleas Court’s judgment denying his petition under R.C. 2953.21 et seq. for postconviction relief. We affirm the court’s judgment as modified to dismiss the petition for lack of jurisdiction.

Featherkile was convicted in 1999 on multiple counts of gross sexual imposition and felonious sexual penetration. We affirmed his convictions on direct appeal and in appeals following his resentencing in 2005 and 2006. *State v. Featherkile*, 1st Dist. Hamilton Nos. C-000006 and C-000047 (Oct. 25, 2000), *appeal not accepted*, 97 Ohio St.3d 1485, 2002-Ohio-6866, 780 N.E.2d 288; *State v. Featherkile*, 1st Dist. Hamilton No. C-050827 (June 14, 2006); *State v. Featherkile*, 1st Dist. Hamilton No. C-060623 (May 2, 2007).

In 2017, Featherkile filed a document captioned, “Petition for Writ of Habeas Corpus Pursuant to Ohio Revised Code 2953.21,” seeking relief from his convictions upon “new” evidence in the form of hospital records and testimony concerning his personal

history of mental illness and trauma. He asserted that that evidence, by showing his “lessened culpability,” provided an evidentiary basis for verdicts of not guilty by reason of insanity, demonstrated that his “de facto life sentence” was disproportionate in violation of the Eighth Amendment to the United States Constitution, and demonstrated that his trial counsel had been constitutionally ineffective in investigating and presenting his case.

In this appeal, Featherkile presents a “Statement” of three “Issues” that might fairly be read to constitute three assignments of error. Those assignments of error, read together, challenge the common pleas court’s failure to grant the relief sought in his petition. We overrule the assignments of error.

We note at the outset that Featherkile’s petition, despite its caption, was not reviewable as a petition for a writ of habeas corpus under R.C. Chapter 2725, because it did not satisfy those statutes’ procedural requirements. *See* R.C. 2725.04. The petition could only be read to seek postconviction relief under R.C. 2953.21 et seq., when it cited R.C. 2953.21 in its caption and offered to satisfy the R.C. 2954.23 jurisdictional requirements for a late postconviction petition.

But the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain the petition. Featherkile’s claim that the “new” evidence would have provided a basis for verdicts finding him not guilty by reason of insanity did not provide a ground for postconviction relief, because it did not demonstrate a constitutional violation in the proceedings leading to his convictions. *See* R.C. 2953.21(A)(1)(a); *State v. Powell*, 90 Ohio App.3d 260, 264, 629 N.E.2d 13 (1st Dist.1993). His Eighth Amendment and ineffective-counsel claims were filed well after the time prescribed by R.C. 2953.21(A)(2) had expired. And those claims did not satisfy the jurisdictional requirements for entertaining late postconviction claims, because the evidence offered in support of the claims, when considered with the files and records of

the case, could not be said to demonstrate by clear and convincing evidence that, but for the claimed constitutional violations, “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 Featherkile’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. His postconviction claims, 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); *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).

Because the common pleas court had no jurisdiction to entertain Featherkile’s postconviction claims, his petition was subject to dismissal without an evidentiary hearing. *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 a dismissal of the petition. And we affirm the judgment as modified.

A certified copy of this judgment entry is 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 25, 2018
per order of the court. _____.

Presiding Judge