

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

STATE OF OHIO,	:	APPEAL NO. C-170599
Plaintiff-Appellee,	:	TRIAL NO. B-9906905
vs.	:	<i>JUDGMENT ENTRY.</i>
KEVIN ROGERS,	:	
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 Kevin Rogers appeals the Hamilton County Common Pleas Court’s judgment overruling his “[Motion] to Exhaust All State Court Remedies * * * Related to Pretrial Plea Bargaining.” We affirm the court’s judgment as modified to dismiss the motion.

Rogers was convicted in 2000 of murder, felonious assault, and aggravated robbery. We affirmed his convictions on appeal. *State v. Rogers*, 1st Dist. Hamilton No. C-000299, 2000 WL 1886627 (Dec. 29, 2000).

In 2017, Rogers filed with the common pleas court his “[Motion] to Exhaust All State Court Remedies * * * Related to Pretrial Plea Bargaining.” He sought in that motion the “re-offer” of an “open-plea bargain” that, “due to [his trial] counsel’s errors,” he had “had to reject.” In this appeal from the overruling of that motion, Rogers advances four assignments of error.

The fourth assignment of error essentially restates the challenge presented in the motion to trial counsel’s effectiveness concerning the “open-plea” offer. The assignment of error may thus be read to challenge the overruling of that motion.

Rogers did not designate in his motion a statute or rule under which the relief sought may have been 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. 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); *State v. Powell*, 90 Ohio App.3d 260, 264, 629 N.E.2d 13 (1st Dist.1993). Rogers alleged in his motion a deprivation of the right to the effective assistance of counsel, secured by the Sixth Amendment to the United States Constitution and Article I, Section 10, of the Ohio Constitution. Consequently, the motion was reviewable by the common pleas court under the standards provided by the postconviction statutes.

But the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain the motion. Rogers 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 demonstrate that, but for the claimed 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)(b).

Nor could relief have been afforded on that ground under a 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. Rogers’s ineffective-counsel claim, even if demonstrated, would not have rendered his convictions void. *See State v. Hayes*, 1st Dist. Hamilton No. C-130450, 2014-Ohio-1263, ¶ 5.

The common pleas court had no jurisdiction to entertain Rogers’s motion. Therefore, we overrule the fourth assignment of error.

In his first, second, and third assignments of error, Rogers contends that the trial court erred in admitting into evidence at trial his “inculpatory answers” and “confession,” and that his trial counsel had been ineffective in investigating, preparing,

and presenting his defense. We have no jurisdiction to entertain those claims in this appeal from the overruling of Rogers’s “[Motion] to Exhaust All State Court Remedies * * * Related to Pretrial Plea Bargaining,” because the claims were not presented in that motion. *See State v. Gipson*, 1st Dist. Hamilton Nos. C-960867 and C-960881, 1997 WL 598397 (Sept. 26, 1997). And those claims, even if demonstrated, would not have rendered his convictions void. *See Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 14-15 (noting the “traditional[]” rule that, except with certain sentencing errors, a judgment is not void unless “a court acts without subject-matter jurisdiction”); *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); *Hayes* at ¶ 5 (holding that ineffective assistance of counsel does not render a conviction void). We, therefore, do not reach the merits of the first, second, or third assignment of error.

Because the common pleas court had no jurisdiction to entertain Rogers’s “[Motion] to Exhaust All State Court Remedies * * * Related to Pretrial Plea Bargaining,” the motion was subject to dismissal without a 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 the dismissal of the motion. 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.

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

To the clerk:

Enter upon the journal of the court on December 19, 2018

per order of the court_____.

Presiding Judge