

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

STATE OF OHIO,	:	APPEAL NO. C-180370
Plaintiff-Appellee,	:	TRIAL NO. B-1306524
vs.	:	<i>JUDGMENT ENTRY.</i>
TERRY CLARK,	:	
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 Terry Clark appeals the Hamilton County Common Pleas Court’s judgment overruling his postconviction “Motion to Vacate Judgment and Conviction.” Because the court had no jurisdiction to grant the relief sought in that motion, we affirm the judgment as modified to dismiss the motion.

Clark was convicted in 2015 of felony murder, with felonious assault as the predicate offense, and having weapons while under a disability. We affirmed those convictions on direct appeal. *State v. Clark*, 1st Dist. Hamilton No. C-150318, 2016-Ohio-948.

In his 2018 “Motion to Vacate Judgment and Conviction,” Clark asserted that his murder conviction was void because of a defect in the complaint in the case numbered 13CRA-29282, filed with the Hamilton County Municipal Court prior to his indictment

for murder in the common pleas court case from which this appeal derives. The complaint, he insisted, did not conform with the requirements of Crim.R. 3 or the fair-notice guarantees of the state and federal constitutions, because in failing to allege the culpable mental state of “purposely,” the complaint did not set forth all essential elements of the offense of murder.

In this appeal, Clark advances a single assignment of error challenging the common pleas court’s denial of relief on that ground. We overrule the assignment of error upon our determination that the court had no jurisdiction to grant that relief.

Clark did not designate in his motion a statute or rule under which the common pleas court may have afforded the relief sought. The court was thus 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. Clark’s motion alleged constitutional violations during the proceedings resulting in his murder conviction. *See* Sixth Amendment to the United States Constitution; Article I, Section 10, Ohio Constitution (securing the accused’s right to know the “nature and cause of the accusation” against him). Thus, the motion was 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. *See* R.C. 2953.21(A)(1)(a).

But the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain Clark’s postconviction 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 defect in his complaint,

“no reasonable factfinder would have found [him] guilty” of felony murder. *See* R.C. 2953.23(A)(1)(b).

Nor could the court have granted Clark relief under its 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 defect in the complaint, even if demonstrated, would not have rendered void his conviction for murder as charged in the indictment. *See State v. Pryor*, 1st Dist. Hamilton No. C-110205, 2012-Ohio-1033, ¶ 7 (holding that a defect in the complaint is not subject to either a direct or collateral challenge after an indictment has been approved).

Because the common pleas court had no jurisdiction to entertain Clark’s “Motion to Vacate Judgment and Conviction,” the motion was subject to dismissal. *See* R.C. 2953.21(D) and 2953.23(A). We, therefore, modify the court’s judgment denying the motion to reflect its dismissal. *See* App.R. 12(A)(1)(a). And we affirm that judgment as modified.

Judgment affirmed as modified.

BERGERON, P.J., CROUSE and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on December 4, 2019

per order of the court _____.

Presiding Judge