

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

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| STATE OF OHIO, | : | APPEAL NO. C-160711 |
| Plaintiff-Appellee, | : | TRIAL NO. B-9708365 |
| vs. | : | <i>JUDGMENT ENTRY.</i> |
| WILLIAM LLOYD PEARL, | : | |
| 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 William Lloyd Pearl appeals the Hamilton County Common Pleas Court’s judgment overruling his “Motion to Modify, Correct and Merge Sentence[s].” We affirm the court’s judgment as modified to dismiss the motion.

Pearl was convicted in 1998 upon guilty pleas to aggravated robbery, forgery, and failing to comply with an order or signal of a police officer. The trial court imposed jointly recommended prison sentences totaling 30 years. Pearl failed to perfect a timely appeal from his convictions, and he unsuccessfully challenged those convictions in postconviction motions filed between 2003 and 2016. *See State v. Pearl*, 1st Dist. Hamilton No. C-100029 (Feb. 9, 2011); *State v. Pearl*, 1st Dist. Hamilton No. C-030592 (June 16, 2004).

In this appeal from the overruling of his 2016 “Motion to Modify, Correct and Merge Sentence[s],” Pearl presents four assignments of error, contending that R.C.

2941.25, R.C. 2929.14(D)(1)(b), and the Double Jeopardy Clauses of the Fifth Amendment to the United States Constitution and Article I, Section 10, of the Ohio Constitution required merger of his six aggravated robberies and of their accompanying firearm specifications, that the trial court erred in failing to make that determination, and that the sentences imposed for those offenses and specifications were subject to correction as void. We address the assignments of error together, because they essentially restate the grounds for relief advanced in his motion and thus may fairly be read to challenge the denial of relief on those grounds. We overrule the assignments of error, upon our determination that the common pleas court had no jurisdiction to entertain the motion.

Pearl did not designate in his motion a statute or rule under which the relief sought might 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. Pearl’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 Pearl’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, and 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 Pearl'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 merger errors, even if demonstrated, would not have rendered his sentences void. *See State v. Williams*, 148 Ohio St.3d 403, 2016-Ohio-7658, 71 N.E.3d 234, ¶ 26 (holding that the failure to merge offenses will render the sentences void only if the trial court found that R.C. 2941.25 mandated merger); *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 Pearl's "Motion to Modify, Correct and Merge Sentence[s]," 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.

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

To the clerk:

Enter upon the journal of the court on November 17, 2017
per order of the court _____.
Presiding Judge