

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

STATE OF OHIO,	:	APPEAL NO. C-200226
Plaintiff-Appellee,	:	TRIAL NOS. B-0506040-A
	:	B-0600264-A
	:	B-0602212
vs.	:	
JAMES MARSHALL,	:	<i>JUDGMENT ENTRY.</i>
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 James Marshall presents on appeal a single assignment of error challenging the Hamilton County Common Pleas Court’s judgment denying his “Motion to Vacate Void Judgment for Lack of Jurisdiction with Inherent Power.” We affirm the court’s judgment as modified to dismiss the motion.

Marshall was convicted in 2006 upon jury verdicts finding him guilty of murder, involuntary manslaughter, and drug trafficking and possession, as charged in consolidated indictments. He unsuccessfully challenged his convictions on direct appeal and in postconviction motions filed in 2006 and 2010. *State v. Marshall*, 175 Ohio App.3d 488, 2008-Ohio-955, 887 N.E.2d 1227 (1st Dist.), *appeal not allowed*, 118 Ohio St.3d 1510, 2008-Ohio- 3369, 889 N.E.2d 1027; *State v. Marshall*, 1st Dist. Hamilton No. C-080385 (Jan. 28, 2009); *State v. Marshall*, 1st Dist. Hamilton No. C-070054 (Dec. 19, 2009); *State v. Marshall*, 1st Dist. Hamilton No. C-110054 (Dec. 9, 2011).

In 2020, Marshall filed with the common pleas court his “Motion to Vacate Void Judgment for Lack of Jurisdiction with Inherent Power.” In that motion, he asked the court to exercise its “inherent power” to vacate his convictions as void for lack of jurisdiction. Marshall argued that the trial court had acted without jurisdiction and denied him his constitutionally guaranteed opportunity to be heard and rights to the effective assistance of counsel and a fair trial, when despite the defense’s stated desire that Marshall take the stand after his witnesses had testified, the court ordered the defense to proceed, and thus compelled Marshall to take the stand first, when those witnesses failed to appear.

Marshall did not designate in his motion a statute or rule under which the relief sought might have been afforded. Therefore, the common pleas court was 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.

Marshall sought relief based on alleged constitutional deprivations during the proceedings resulting in his convictions. Therefore, his motion was reviewable 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). But the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain those claims. Marshall had twice before sought relief under the postconviction statutes. He filed his successive 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 his late postconviction claims, when the record does not demonstrate that, but for the claimed constitutional deprivations, “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).

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Nor could the common pleas court have afforded Marshall the relief sought in his motion 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. A judgment of conviction is voidable, not void, if entered by a court having personal and subject-matter jurisdiction. *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 4. The trial court had personal jurisdiction by virtue of Marshall’s appearance before the court under indictment for murder and felony charges. And the trial court acted within its subject-matter jurisdiction in convicting him of those offenses. Thus, even if demonstrated, the alleged constitutional deprivations resulting from the trial court’s order concerning the order of defense witnesses would not have rendered Marshall’s convictions void. *See id.* at ¶ 5 and 41.

Because the common pleas court had no jurisdiction to entertain Marshall’s “Motion to Vacate Void Judgment for Lack of Jurisdiction with Inherent Power,” the motion was subject to dismissal. Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment appealed 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., CROUSE and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on June 30, 2021,
per order of the court _____.

Administrative Judge