

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

STATE OF OHIO,	:	APPEAL NO. C-150550
Respondent-Appellee,	:	TRIAL NO. B-0009175
vs.	:	<i>JUDGMENT ENTRY.</i>
ANDREW BEVINS, JR.,	:	
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 Andrew Bevins, Jr., appeals from the Hamilton County Common Pleas Court’s judgment denying his “Motion to Issue a Final Appealable Order and to Vacate a Void Judgment.” We affirm the court’s judgment as modified.

Bevins was twice tried in 2003 on charges of aggravated burglary and rape. Each trial ended in a mistrial due to a hung jury. He was then retried and convicted on both charges in 2005. He challenged those convictions on direct appeal and in a number of postconviction proceedings. We twice remanded his case for resentencing, while affirming his convictions in all other respects. *See State v. Bevins*, 1st Dist. Hamilton No. C-050754, 2006-Ohio-6974, *appeal not accepted*, 117 Ohio St.3d 1437, 2008-Ohio-1279, 883 N.E.2d 456; *State v. Bevins*, 1st Dist. Hamilton No. C-120345, 2013-Ohio-156. The balance of his efforts proved fruitless.

In this appeal, Bevins advances a single assignment of error, challenging the overruling of his 2015 “Motion to Issue a Final Appealable Order and to Vacate a

Void Judgment.” We overrule the assignment of error upon our determination that the common pleas court had no jurisdiction to entertain the motion.

In his motion, Bevins sought relief pursuant to R.C. 2953.21 et seq., governing the proceedings on a petition for postconviction relief. He asserted that he had been denied due process when the trial court had discharged the jury in his second 2003 trial without stating the reasons for the discharge on the journal, as required by R.C. 2945.36. But Bevins filed the motion well after the time prescribed by R.C. 2953.21(A)(2) had expired. And the postconviction statutes did not confer upon the common pleas court jurisdiction to entertain his late postconviction claim, when he failed to show “by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found [him] guilty of the offense[s] of which [he] was convicted * * *.” R.C. 2953.23(A)(1)(b).

Nor could the common pleas court have granted Bevins 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. Bevins waived his challenge to the trial court’s failure to journalize the reason for the mistrial, when he failed to object to that omission before his subsequent trial. *State ex rel. Bevins v. Cooper*, 138 Oho St.3d 275, 2014-Ohio-544, 6 N.E.3d 33, ¶ 8, citing Crim.R. 12(C)(1) and 12(H). Thus, the omission could not be said to have rendered his 2005 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); *see also 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”).

Because the common pleas court had no jurisdiction to entertain Bevins’s postconviction claim, his 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 a dismissal of the motion. And we affirm the judgment as modified.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., DEWINE and MOCK, JJ.

To the clerk:

Enter upon the journal of the court on November 2, 2016

per order of the court _____.

Presiding Judge