

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

STATE OF OHIO,	:	APPEAL NO. C-190493
Plaintiff-Appellee,	:	TRIAL NO. B-1304393
vs.	:	<i>JUDGMENT ENTRY.</i>
DANIEL LITTLEPAGE,	:	
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 Daniel Littlepage appeals the Hamilton County Common Pleas Court’s judgment overruling his 2019 “Motion to Vacate and Set Aside the Judgment [of] Conviction Pursuant to Criminal Rule 52(B).” We affirm the court’s judgment as modified to dismiss the motion.

Littlepage was convicted in 2014 upon his guilty plea to aggravated murder. He unsuccessfully challenged his conviction on direct appeal and in postconviction motions filed between 2014 and 2019. *See State v. Littlepage*, 1st Dist. Hamilton No. C-140574 (Aug. 26, 2015); *State v. Littlepage*, 1st Dist. Hamilton No. C-140760 (Dec. 4, 2015); *State v. Littlepage*, 1st Dist. Hamilton No. C-140574 (Aug. 26, 2015); *State v. Littlepage*, 1st Dist. Hamilton No. C-160918, 2018-Ohio-1382; *State v. Littlepage*, 1st Dist. Hamilton Nos. C-170207 and C-170157, 2018-Ohio-2959; *State v. Littlepage*, 1st Dist. Hamilton No. C-180524 (Nov. 16, 2018).

In this appeal, Littlepage presents three assignments of error that essentially challenge the denial of the relief sought in his 2019 “Motion to Vacate and Set Aside the Judgment [of] Conviction Pursuant to Criminal Rule 52(B).” We address together and overrule the assignments of error upon our determination that relief was properly denied, because the common pleas court had no jurisdiction to entertain the motion.

In his motion, Littlepage sought relief from his conviction on the ground of “cumulative error.” Under the doctrine of cumulative error, a judgment of conviction may be reversed if the cumulative effect of errors deemed separately harmless is to deny the defendant the right to a fair trial secured by the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution. *State v. DeMarco*, 31 Ohio St.3d 191, 509 N.E.2d 1256 (1987), paragraph two of the syllabus. Littlepage asserted that his trial counsel had been ineffective in counseling him to “plead [guilty] to the greater offense of aggravated murder,” rather than the lesser charged offense of murder, and in “coercing” his guilty plea to aggravated murder with the baseless threat that he would otherwise be sentenced to death. He asserted that the trial court had erred in imposing a sentence for aggravated murder that was not authorized by statute. And he asserted that he had been denied his right to appeal by trial counsel’s ineffectiveness in stating at sentencing that the conviction would not be appealed, by this court’s subsequent denial of his delayed appeal, and by subsequently appointed appellate counsel’s failure to communicate with him and filing of an *Anders* brief. He asked the common pleas court to “notice[,]” pursuant to Crim.R. 52(B), those “[p]lain errors [and] defects affecting substantial rights” and to “reverse[.]” his conviction on the ground that the cumulative effect of those alleged errors and constitutional deprivations denied him a fair trial.

Littlepage did not seek by his motion to withdraw his guilty plea pursuant to Crim.R. 32.1, as he had in his 2018 “Motion to Set Aside Judgment and Vacate Plea.” And Crim.R. 52 did not confer upon the common pleas court jurisdiction to grant him postconviction relief. Nor did he otherwise designate in his motion a statute or rule under which the relief sought may have been granted. Thus, the common pleas court was left to determine the appropriate criteria for deciding the motion. *See State v. Schlee*, 117 Ohio St.3d 153, 2008-Ohio-545, 882 N.E.2d 431, ¶ 12 and syllabus.

Littlepage’s cumulative-error claim sought relief based on an alleged constitutional violation during the proceedings resulting in his conviction. Therefore, his 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). But the postconviction statutes did not confer upon that court jurisdiction to entertain the claim. Littlepage filed his motion well after the time prescribed by R.C. 2953.21(A)(2) had expired. And he failed to satisfy the R.C. 2953.23 jurisdictional requirements for entertaining a late postconviction claim, when the record does not demonstrate that, but for the claimed constitutional deprivation, “no reasonable factfinder would have found [him] guilty of the offense of which [he] was convicted.” See R.C. 2953.23(A)(1)(b).

Nor could the common pleas court have granted 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. A judgment of conviction is voidable, not void, if entered by a court having personal and subject-matter jurisdiction. *State v. Harper*, Slip Opinion No. 2020-Ohio-2913, ¶ 4. The trial court had personal jurisdiction by virtue of Littlepage’s appearance before the court upon his indictment on felony charges. And the court acted within its subject-matter jurisdiction in accepting his guilty plea and finding him guilty of, and sentencing him for, aggravated murder. Therefore, the alleged errors, considered either individually or collectively, would not have rendered Littlepage’s conviction void. See *id.* at ¶ 5 and 41.

Because the common pleas court had no jurisdiction to entertain Littlepage’s “Motion to Vacate and Set Aside the Judgment [of] Conviction Pursuant to Criminal Rule 52(B),” the motion was subject to dismissal. Accordingly, we modify the judgment appealed from to reflect the dismissal of the motion. See App.R. 12(A)(1)(a). 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.

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

To the clerk:

Enter upon the journal of the court on September 30, 2020,
per order of the court _____.

Presiding Judge