[Cite as *State v. Bedford*, 2011-Ohio-2054.]

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

STATE OF OHIO,	:	APPEAL NO. C-100735 TRIAL NO. B-8401565
Respondent-Appellee,	:	*D E C I S I O N.*
vs.	:	
DANIEL LEE BEDFORD,	:	
Petitioner-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed as Modified

Date of Judgment Entry on Appeal: April 29, 2011

Gerhardstein & Branch, Co. LPA and *Alphonse A. Gerhardstein*, for Petitioner-Appellant,

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Ronald W. Springman, Jr.,* Assistant Prosecuting Attorney, for Respondent-Appellee.

Per Curiam.

{¶1} Petitioner-appellant Daniel Lee Bedford appeals from the Hamilton County Common Pleas Court's judgment denying his postconviction petition seeking relief from his death sentence on the ground that he is mentally retarded. We affirm the court's judgment as modified.

{¶2} In 1984, a Hamilton County jury found Bedford guilty of aggravated murder and murder in connection with the shooting deaths of his ex-girlfriend and her then-boyfriend. For the aggravated murder, the trial court imposed a death sentence. Bedford's convictions were upheld on direct appeal to this court,[1] and to the Ohio Supreme Court,[2] and the United States Supreme Court denied his petition for a writ of certiorari.[3] In 1991, we affirmed the common pleas court's denial of Bedford's first postconviction petition,[4] and the Ohio Supreme Court declined jurisdiction in his appeal of our decision.[5]

{¶3} On August 11, 2010, Bedford filed with the common pleas court a second postconviction petition, seeking relief from his death sentence on the ground that he is mentally retarded. His execution, he asserted, would violate the proscription against cruel and unusual punishment contained in the Eighth Amendment to the United States Constitution. And the determination of whether he is mentally retarded, he insisted, had to be made by a jury, rather than the common pleas court, based on matters adduced at a new sentencing hearing. The state moved to dismiss the petition on the ground that it was not timely filed and did not satisfy the jurisdictional requirements of R.C. 2953.23. The common pleas court did not decide the state's motion to dismiss, but summarily denied Bedford's petition.

[1] See *State v. Bedford* (Oct. 8, 1986), 1st Dist. No. C-841565.
[2] See *State v. Bedford* (1988), 39 Ohio St.3d 122, 529 N.E.2d 913.
[3] See *Bedford v. Ohio* (1989), 489 U.S. 1072, 109 S.Ct. 1357.
[4] See *State v. Bedford* (Sept. 11, 1991), 1st Dist. No. C-900412.
[5] See *State v. Bedford* (1992), 62 Ohio St.3d 1508, 583 N.E.2d 1320.

{¶4} Bedford presents on appeal two assignments of error. He contends that the common pleas court erred (1) when it failed to state the evidentiary and legal grounds for denying the petition by making findings of fact and conclusions of law, and (2) if it denied the petition on the ground, asserted in the state's motion to dismiss, that it lacked jurisdiction to entertain Bedford's late and successive petition.

I. Assignments of Error

A. No jurisdiction to entertain the late and successive petition

{¶5} We address first the second assignment of error, challenging the denial of the petition. The challenge is untenable.

1. Atkins, Lott, and the postconviction statutes.

{¶6} In June 2002, the United States Supreme Court ruled in *Atkins v. Virginia*[6] that executing a mentally retarded individual violates the Eighth Amendment's proscription against cruel and unusual punishment. In December of that year, the Ohio Supreme Court in *State v. Lott*[7] established procedures and substantive standards for adjudicating a death-eligible defendant's claim that he is, in the words of the United States Supreme Court in *Atkins*, "so impaired as to fall within the range of mentally retarded offenders [against] who[se] [execution] there [had emerged] a national consensus."[8] The *Lott* court determined that the common pleas court, rather than the jury, should decide whether a defendant is mentally retarded, based upon its "own de novo review of the evidence," including "professional evaluations of [the defendant's] mental status."[9] And the *Lott* court found in R.C. 2953.21 et seq., governing the proceedings on a petition for postconviction relief, "a suitable statutory framework for reviewing [an] *Atkins* claim."[10]

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[6] (2002), 536 U.S. 304, 122 S.Ct. 2242.
[7] 97 Ohio St.3d 303, 2002-Ohio-6625, 779 N.E.2d 1011.
[8] See *Atkins*, 536 U.S. at 317.
[9] See *Lott*, 97 Ohio St.3d at ¶18.
[10] Id. at ¶13.

{¶7} The postconviction statutes confer jurisdiction on a common pleas court to entertain a collateral challenge to a judgment of conviction based on a state or federal constitutional violation during the proceedings resulting in the conviction, if the petitioner satisfies either R.C. 2953.21's time limits or R.C. 2953.23's jurisdictional requirements.[11] R.C. 2953.21, in relevant part, requires that a postconviction petition be filed within 180 days after the trial transcript was filed in the direct appeal to the court of appeals.[12] R.C. 2953.23 closely circumscribes the common pleas court's jurisdiction to entertain a tardy or successive postconviction petition: the petitioner must show either that he was unavoidably prevented from discovering the facts upon which his claim depends, or that his claim is predicated upon a new, retrospectively applicable federal or state right recognized by the United States Supreme Court since the expiration of the period prescribed by R.C. 2953.21;[13] and when the claim challenges a death sentence, the petitioner must "show[] by clear and convincing evidence that, * * * but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence."[14]

{¶8} R.C. 2953.21(C) authorizes the common pleas court to conduct an evidentiary hearing on a postconviction petition. But a postconviction claim is subject to dismissal without a hearing when the petitioner has failed to submit with his petition evidentiary material setting forth sufficient operative facts to demonstrate substantive

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[11] See R.C. 2953.21(A)(1)(a).
[12] See R.C. 2953.21(A)(2).
[13] See R.C. 2953.23(A)(1)(a). The citations in this case are to the postconviction statutes as amended effective October 29, 2003. In June 2003, when *Lott* was decided, R.C. 2953.23(A)(1) and 2953.23(A)(2) similarly permitted a common pleas court to entertain a late or successive postconviction challenge to a death sentence if "(a) The petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief," or "(b) Subsequent to the period prescribed in [R.C. 2953.21](A)(2) * * * or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right," and "[t]he petitioner shows by clear and convincing evidence that, * * * but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence."
[14] R.C. 2953.23(A)(1)(b).

grounds for relief.[15] Thus, because the purpose of an R.C. 2953.21(C) hearing is to aid the court in deciding a postconviction petition on the merits, the statute does not mandate a hearing if the court is without jurisdiction to entertain a petition on the merits.

{¶9} Lott had filed his postconviction petition well after the statutory 180 days had expired. Therefore, R.C. 2953.21, by its terms, did not confer jurisdiction on the common pleas court to entertain Lott's *Atkins* claim.

{¶10} But the supreme court viewed Lott's postconviction petition as "more akin to a first petition than a successive petition for postconviction relief,"[16] because Lott, who had been sentenced to death before the decision in *Atkins*, had yet to have a full and fair opportunity to litigate a claim of mental retardation as a complete bar to the death penalty.[17] Thus, the supreme court excused from R.C. 2953.23(A)(1)(b)'s " 'clear and convincing' threshold" requirement any defendant who had been sentenced to death before the decision in *Atkins*, and who, within 180 days of the *Lott* decision, advances an *Atkins* claim in a postconviction petition. For those petitioners, the court declared, "the trial court shall decide whether the petitioner is mentally retarded by using the preponderance-of-the-evidence standard."[18] But a postconviction petition raising an *Atkins* claim "filed more than 180 days after [the *Lott*] decision must meet the statutory [jurisdictional] standards for untimely and successive petitions for postconviction relief."[19]

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[15] See R.C. 2953.21(C); *State v. Pankey* (1981), 68 Ohio St.2d 58, 428 N.E.2d 413; *State v. Jackson* (1980), 64 Ohio St.2d 107, 413 N.E.2d 819.
[16] *Lott*, 97 Ohio St.3d at ¶17.
[17] See id. at ¶17 and 20.
[18] See id. at ¶17 and 24.
[19] Id. at ¶24.

2. Bedford's Atkins claim

{¶11} We note preliminarily that Bedford's postconviction petition advances three "cause[s] of action." In his "first cause of action," he set forth his *Atkins* claim. In his "second cause of action," he sought a jury determination of his *Atkins* claim. And in his "third cause of action," he argued that the Supreme Court's recognition in *Atkins* of the evolution of a national consensus against executing the mentally retarded required the common pleas court to relitigate his death sentence in a new sentencing hearing.

{¶12} We read the second and third "cause[s] of action" to state arguments in support of, rather than grounds for relief independent of, the *Atkins* claim advanced in the first "cause of action." Moreover, the Ohio Supreme Court in *Lott*, tasked by the United States Supreme Court in *Atkins* with developing the procedures and substantive standards for enforcing its constitutional principle, determined that the common pleas court, rather than the jury, should decide an *Atkins* claim, and that the postconviction statutes provided the procedures for reviewing the claim.[20] In this case, the common pleas court was not free to proceed otherwise.[21] Therefore, we read Bedford's postconviction petition to state a single ground for relief: that his execution would violate the Eighth Amendment's proscription against cruel and unusual punishment because he is mentally retarded.

a. The petition was late and successive

{¶13} Bedford filed this, his second postconviction petition well after the 180 days prescribed by R.C. 2953.21(A)(2) had expired. Therefore, R.C. 2953.21 did not

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[20] Id. at ¶13 and 18.
[21] See *Johnson v. Microsoft Corp.*, 156 Ohio App.3d 249, 2004-Ohio-761, 805 N.E.2d 179, ¶11 (following *Rodriguez de Quijas v. Shearson/Am. Exp. Inc.* [1989], 490 U.S. 477, 484, 109 S. Ct. 1917, to hold that an inferior court must follow the controlling authority of a higher court, leaving to the higher court the prerogative of overruling its own decision); see, also, *State v. Hill*, 177 Ohio St.3d 171, 2008-Ohio-3509, 894 N.E.2d 108, ¶67; *State v. Waddy*, 10th Dist. No. 05AP-866, 2006-Ohio-2828, ¶15-16 (rejecting arguments that, despite *Lott*, appellant was entitled to a new sentencing hearing and a jury determination of the mental-retardation issue).

confer jurisdiction on the common pleas court to entertain Bedford's postconviction *Atkins* claim.

b. A new, retrospectively applicable constitutional right

{¶14} Bedford's late and successive petition plainly satisfied the first R.C. 2953.23 jurisdictional requirement. The supreme court in *Lott* held that, because the Supreme Court in *Atkins* "ha[d] recognized a new federal right applying retroactively to convicted defendants facing the death penalty," a postconviction *Atkins* claim filed by a defendant who, like Bedford, had been sentenced to death before the 2002 decision in *Atkins*, satisfies R.C. 2953.23(A)(1)(a)'s requirement that a late or successive postconviction petition be predicated upon a new, retrospectively applicable federal or state right recognized by the United States Supreme Court since the R.C. 2953.21 filing time has expired.[22]

c. No outcome-determinative constitutional error

{¶15} But R.C. 2953.23(A)(1)(b) required that Bedford also "show[] by clear and convincing evidence that, * * * but for constitutional error at the sentencing hearing, no reasonable factfinder would have found [him] eligible for the death sentence."[23] Thus, Bedford bore the burden of establishing, by clear and convincing evidence, an outcome-determinative constitutional error in the imposition of his death sentence. This he failed to do.

{¶16} ***Mental-retardation criteria.*** An *Atkins* claim requires proof that the defendant's death sentence violated the Eighth Amendment's proscription against cruel and unusual punishment because the defendant is mentally retarded. The court in *Lott* looked to the clinical definitions of mental retardation, cited with approval by the Supreme Court in *Atkins*, to provide three criteria for evaluating a capital

[22] *Lott*, 97 Ohio St.3d at ¶17.
[23] R.C. 2953.23(A)(1).

defendant's claim that he is mentally retarded.[24] The defendant must demonstrate "(1) significantly subaverage intellectual functioning, (2) significant limitations in two or more adaptive skills, such as communication, self-care, and self-direction, and (3) onset before the age of 18."[25]

{¶17} The court in *Lott* had formulated its mental-retardation criteria based upon the clinical definitions of mental retardation provided in 1992 by the American Association of Mental Retardation ("AMMR") and in 2002 by the American Psychiatric Association ("APA") and cited with approval by the Supreme Court in *Atkins*.[26] In support of his postconviction petition, Bedford offered outside evidence in the form of excerpts from a manual published in 2010 by the AMMR's successor, the American Association on Intellectual and Developmental Disabilities ("AAIDD"). In the manual, the AAIDD defined what was known as "mental retardation," and is now known as "intellectual disability," as "characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills, * * * originating before age 18."[27]

{¶18} ***IQ-over-70 presumption.*** Concerning a death-eligible defendant's intellectual functioning, the court in *Lott* cautioned that an IQ test score is merely one measure of intellectual functioning that "alone [is] not sufficient to make a final determination on [the mental-retardation] issue."[28] Nevertheless, the court held that an IQ score above 70 gives rise to "a rebuttable presumption that [the] defendant is not mentally retarded."[29]

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[24] See *Lott*, 97 Ohio St.3d at ¶18; see, also, *Atkins*, 536 U.S. at 309, fn. 3.
[25] *Lott*, 97 Ohio St.3d at ¶12.
[26] See *Atkins*, 536 U.S. at 308, fn. 3; *Lott*, 97 Ohio St.3d at ¶12.
[27] American Association on Intellectual and Developmental Disabilities, Intellectual Disability: Definition, Classification, and Systems of Supports 1 (11 Ed.2010).
[28] *Lott*, 97 Ohio St.3d at ¶12.
[29] Id.

{¶19} An IQ test administered in 1960, when Bedford was 13 years old and in the sixth grade, yielded a score of 70; a test administered by a clinical psychologist in 1984 yielded a full-scale score of 76. Thus, Bedford is presumptively not mentally retarded.

{¶20} In his petition, Bedford urged the common pleas court to abandon the over-70 presumption because the AAIDD's definition requires that IQ scores be subjected to a standard error of measurement, and because the Supreme Court in *Atkins* had acknowledged that "an IQ between 70 and 75 or lower * * * is typically considered the cutoff I.Q. score for the intellectual function prong of the mental retardation definition."[30] But again, the common pleas court was not free to disregard the substantive standards set down by the supreme court in *Lott*.[31] Moreover, the *Lott* court's mental-retardation criteria, including the IQ-over-70 presumption, had been informed by the *Atkins* decision and by AAMR and APA definitions of mental retardation that, like the AAIDD definition, had also required that IQ scores be subjected to a standard error of measurement.

{¶21} ***Adaptive-behavior criterion.*** The adaptive-behavior component of the mental-retardation evaluation focuses on the effects of the defendant's intellectual-functioning limitations on his life skills. The AAIDD divides adaptive behavior into three domains: (1) "Conceptual skills," including "reading and writing[,] and money, time[,] and number concepts"; (2) "Social skills," including "interpersonal skills, social responsibility, self-esteem, gullibility, naivete (i.e., wariness), follows rules/obeys laws, avoids being victimized, and social problem solving"; and "Practical skills," including

[30] *Atkins*, 536 U.S. at 309, fn. 5.
[31] See *Johnson*, 156 Ohio App.3d at ¶11.

"activities of daily living (personal care), occupational skills, use of money, safety, health care, travel, transportation, schedules/routines, and use of the telephone."[32]

{¶22} ***The evidence.*** In his petition, Bedford pointed to evidence adduced at trial that, he insisted, rebutted the IQ-over-70 presumption and showed significant limitations in his adaptive skills. His arguments are unpersuasive.

{¶23} The defense had presented at trial Bedford's school records from 1958 to 1964. The school records showed that Bedford had started the 1958-to-1959 school year in fifth grade, but that before the school year had ended, he had been returned to the fourth grade. Tests administered in 1961, when Bedford was 13 years old and in the sixth grade, showed that he had functioned at a third-to-fourth-grade level in reading and arithmetic. The records reflected increasingly sporadic attendance and mostly failing grades, ending in 1963, when Bedford was 15 years old and had been assigned to repeat the eighth grade.

{¶24} Bedford did not support his postconviction *Atkins* claim with "professional evaluations" of his intellectual disability, as contemplated by the supreme court in *Lott*.[33] But a postconviction determination of whether, for purposes of an *Atkins* claim, a defendant is so intellectually disabled that his execution would constitute cruel and unusual punishment may be informed by expert testimony offered at trial for other purposes.[34]

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[32] American Association on Intellectual and Developmental Disabilities, Intellectual Disability: Definition, Classification, and Systems of Supports 44 (11 Ed.2010).
[33] See *Lott*, 97 Ohio St.3d at ¶18.
[34] See *State v. Carter*, 157 Ohio App.3d 689, 2004-Ohio-3372, 813 N.E.2d 78, ¶22 (noting that a psychologist's testimony concerning defendant's mental retardation during the penalty phase of defendant's capital trial was probative, but not determinative, of the issue whether, for purposes of his *Atkins* claim, he was so impaired that his execution would constitute cruel and unusual punishment); accord *State v. Bays,* 159 Ohio App.3d 469, 2005-Ohio-47, 824 N.E.2d 167, ¶23; see, also, *Hill*, 177 Ohio App.3d at ¶34-61 (holding that neither res judicata nor collateral estoppel barred "relitigation" of the mental-retardation issue for purposes of an *Atkins* claim, because *Atkins* and *Lott* had established a new standard for determining the issue in the context of the Eighth Amendment, and because the issue had not been "actually and directly litigated" at sentencing when it was not then "essential" to the imposition of the death penalty); accord *Waddy*, supra at ¶21-23.

{¶25} One of the defense witnesses during the guilt phase of Bedford's trial was a clinical psychologist who testified that Bedford's 1984 full-scale IQ score of 76 placed him "in the range of borderline mentally retarded, * * * between a complete diagnosis of mild retardation and the next higher level [of] low average or dull normal." The psychologist's examination of Bedford showed that he was unable to read or to write much more than his name and a few words. He had a history of alcohol abuse and of extreme responses to separations from women. And throughout his examination, he showed signs of suffering from extreme stress and depression. But during the examination, the psychologist had perceived no impairment in his ability to concentrate, listen, or remember, or to speak logically, to the point, and without digression.

{¶26} A second clinical psychologist testified during the penalty phase of Bedford's trial. The psychologist concurred in the assessment of Bedford as extremely stressed and depressed due to the seriousness of his legal situation and the guilt, agitation, anxiety, and poor self-image he had experienced concerning his crimes. The psychologist concluded that Bedford suffered from borderline personality disorder, characterized by an inability to emotionally sustain himself and caused by events in his early development that prompted him to rely on others as a child relies on his mother. The psychologist stated that, at the time of the murders, Bedford had been impaired by his personality disorder and his alcohol abuse, but had not been psychotic or sufficiently depressed to be considered mentally ill, and he had been capable of making judgments. By the time of his trial, the psychologist asserted, a "thought blocking defense" was in operation, causing Bedford to subconsciously choose not to recall the most disturbing events of his crimes. And his depression had become sufficiently severe that he would have benefited from hospitalization.

{¶27} Bedford's statements to Tennessee and Cincinnati law-enforcement officials confirmed much of the psychologists' assessments. Bedford had indicated to them that he could not read or write more than his name. But before making his statements, he had listened to their recitations of, had professed to understand, and had signed waivers of his rights. His statements provided straightforward, chronological, and consistent narratives of the murders. And in each statement, he recalled shooting each victim with a handgun, but could not recall that he had also shot his ex-girlfriend with a shotgun.

{¶28} In his unsworn statement during the penalty phase of his trial, Bedford asserted that he had never done well in school, but that, in 1957, when he was in the fourth grade, he had been awarded a "scholarship" in art that his mother had insisted he decline. Bedford's father left the family that year. Thereafter, Bedford saw him only when his father came into the store where Bedford worked selling newspapers. In 1960, when Bedford was again in the fifth grade, his father was murdered by a woman whose name Bedford, even when prompted, would not recall. His mother died of cancer in 1964. After her death, Bedford left school and married, and he and his wife had six children. By his late teens, Bedford had become a "heavy" drinker subject to blackouts. But he maintained steady employment in a factory to support his family until, in the mid-1970s, his wife left him for his childhood best friend. With his wife gone, and their children in need of care, Bedford lost his job. When his wife returned, she barred Bedford from the house. During the next few years, he lived in his car, in friends' basements, and in the back of a bar. He later found work digging graves during the day and tending bar at night. Then, for the 12 years preceding the murders, he worked tending bar full-time.

{¶29} Finally, defense counsel, in closing argument during the penalty phase of Bedford's trial, conceded that Bedford had had 22 prior contacts with the law, but asserted that half of them concerned traffic offenses and child-support matters, and that none of them had involved violence.[35] Counsel also asserted that Bedford had spent the months before trial "teaching himself to read with a He-Man comic book." Bedford's crimes, his counsel insisted, had been the consequence of his "character disorder and the circumstances that he found himself in and his alcohol problem."

{¶30} ***Presumption not rebutted.*** Bedford's illiteracy and his woeful school test scores and grades were probative of limitations in his intellectual functioning. But this evidence does not conclusively demonstrate significant intellectual limitations, when considered with the evidence of his sporadic school attendance and defense counsel's assertion that Bedford had, while awaiting trial, taught himself to read, and when viewed in the context of his dysfunctional home life when these matters manifested themselves.[36]

{¶31} Bedford also had exhibited limitations in his adaptive behavior, including the conceptual skills of reading and writing and the social skills of interpersonal skills, self-esteem, following rules and obeying laws, and social problem solving.[37] But the record does not demonstrate that his adaptive-behavior limitations, however significant, were the product of limitations in his intellectual functioning. Again, his illiteracy may as well have been attributable to his dysfunctional home life during his formative years. And both clinical psychologists who examined Bedford had attributed his social-skills limitations to the borderline personality disorder resulting

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[35] See *Bedford*, 39 Ohio St.3d at 133 (finding in mitigation of a death sentence that Bedford "lack[ed] a significant criminal background").
[36] See id. (finding that Bedford had "experienced several unfortunate, perhaps tragic, incidents during his lifetime").
[37] See id. (finding that Bedford had "poor communication skills," was "alcohol dependent," and was "generally dependent on others for reinforcement").

from his early childhood development and the alcohol abuse that had likely been the legacy of his alcoholic father.

{¶32} Thus, the record does not demonstrate either sufficient significant limitations in Bedford's intellectual functioning or consequent adaptive-behavior limitations to rebut the presumption, arising from his 1984 IQ score of 76, that he is not mentally retarded.

{¶33} ***The Atkins claim was subject to dismissal.*** The common pleas court's determination in a postconviction proceeding that a defendant is not, by the *Lott* court's definition, mentally retarded will not be disturbed on appeal if it was supported by some competent and credible evidence.[38] The court below had before it some competent and credible evidence to support a finding that Bedford is not mentally retarded. Consequently, Bedford failed to show by clear and convincing evidence the claimed Eighth Amendment violation. In turn, because Bedford failed to satisfy the R.C. 2953.23 jurisdictional requirement of outcome-determinative constitutional error in the imposition of his death sentence, the common pleas court properly declined to entertain his late and successive postconviction. We, therefore, overrule the second assignment of error.

B. No duty to make findings of fact and conclusions of law.

{¶34} Our conclusion, dispositive of the second assignment of error, that the common pleas court had no jurisdiction to entertain Bedford's postconviction petition is also dispositive of his first assignment of error, challenging the court's failure to make and file findings of fact and conclusions of law. R.C. 2953.21(G) requires a common pleas court to journalize findings of fact and conclusions of law when it denies a petition for postconviction relief. But a court's disposition of a late

[38] See *State v. White*, 118 Ohio St.3d 12, 2008-Ohio-1623, 885 N.E.2d 905, ¶45.

or successive petition need not include findings of fact and conclusions of law, when, as here, the court has no jurisdiction to entertain the petition.[39] We, therefore, overrule the first assignment of error.

II. Conclusion

The common pleas court had no jurisdiction to entertain Bedford's late and successive postconviction petition because Bedford failed to satisfy the R.C. 2953.23 jurisdictional requirement of outcome-determinative constitutional error in the imposition of his death sentence. Therefore, the petition was subject to dismissal without an evidentiary hearing and without findings of fact and conclusions of law. Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment appealed from to reflect a dismissal of the petition. And we affirm the judgment as modified.

Judgment affirmed as modified.

HILDEBRANDT, P.J., HENDON and FISCHER, JJ.

Please Note:

The court has recorded its own entry on the date of the release of this decision.

[39] See *State ex rel. Carroll v. Corrigan* (1999), 84 Ohio St.3d 529, 705 N.E.2d 1330; *State v. Byrd* (2001), 145 Ohio App.3d 318, 762 N.E.2d 1043.