NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 111069-U

NO. 4-11-1069

FILED
November 9, 2012
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Morgan County
MICHAEL JACKSON,	)	No. 87CF121
Defendant-Appellant.	)	
	)	Honorable
	)	Richard T. Mitchell,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and Cook concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in dismissing defendant's November 2011 motion requesting a hearing on his April 1988 motion to vacate his plea where defendant abandoned the motion by not timely noticing it up for a hearing.

¶ 2 In December 1987, defendant, Michael Jackson, pleaded guilty to residential burglary (Ill. Rev. Stat. 1987, ch. 38, ¶ 19-3). In March 1988, the trial court sentenced him to four years' imprisonment. In April 1988, defendant filed a motion to vacate his plea and arrest judgment, which was not noticed up for a hearing. In November 2011, defendant filed a motion requesting a hearing date for the April 1988 motion, which the trial court denied. Defendant appeals, and we affirm.

¶ 3 I. BACKGROUND

¶ 4 In December 1987, defendant pleaded guilty to residential burglary (Ill. Rev. Stat.

1987, ch. 38, ¶ 19-3). The State agreed to request a four-year sentence in exchange for defendant's guilty plea.

¶ 5 In March 1988, defendant filed a motion to vacate his guilty plea. The March 3, 1988, docket entry indicates the trial court denied that motion and sentenced defendant to four years' imprisonment with two years' mandatory supervised release (MSR).

¶ 6 On April 4, 1988, defendant filed a "Motion to Vacate Plea of Guilty in Arrest of Judgment and New Trial," which defendant characterized as a second motion to withdraw his guilty plea. However, defendant did not notice the motion for a hearing.

¶ 7 In January 2011, defendant filed a motion for writ of error *coram nobis*, alleging his appointed counsel failed to file an appeal following his plea despite the fact defendant informed counsel of his desire to appeal.

¶ 8 In March 2011, the trial court recharacterized defendant's motion for writ of error *coram nobis* as a section 2-1401 motion for relief from judgment (735 ILCS 5/2-1401 (West 2010)) and dismissed it as untimely. The court found it had been 24 years since sentencing and defendant had not taken any steps to appeal, despite being aware of the status of the case. Defendant did not appeal the court's dismissal.

¶ 9 On April 1, 2011, defendant filed a motion for postconviction relief pursuant to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2010)), alleging he received ineffective assistance of counsel where his appointed counsel failed to file an appeal following defendant's sentencing. On April 22, 2011, the State filed a motion to dismiss, arguing defendant lacked standing under the Act because he fully served the sentence he received in connection with the underlying case. On June 15, 2011, the trial court dismissed defendant's

postconviction petition as untimely, finding defendant had already served his sentence and MSR term.

¶ 10 In July 2011, defendant filed a notice of appeal, and the trial court appointed the office of the State Appellate Defender (OSAD) as defense counsel. OSAD moved to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987). This court granted OSAD's motion and affirmed the judgment of the trial court. *People v. Jackson*, 2012 IL App (4th) 110587-U.

¶ 11 On November 1, 2011, defendant filed a motion requesting a hearing date for the April 4, 1988, motion to vacate his guilty plea.

¶ 12 On November 16, 2011, the trial court dismissed defendant's motion, finding "the same issue had previously been decided by this Court."

¶ 13 On December 1, 2011, defendant filed a notice of appeal from the trial court's order entered "November 16, 2011[,] pursuant to action in his criminal case on February 22nd, 1988."

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant argues his trial counsel was ineffective for failing to (1) pursue a hearing on his motion to vacate his guilty plea and (2) file an Illinois Supreme Court Rule 604(d) certificate. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). However, an appellate court has jurisdiction of only those matters raised in the notice of appeal. *People v. Gallinger*, 191 Ill. App. 3d 488, 490, 548 N.E.2d 78, 79-80 (1989); *People v. Harvey*, 5 Ill. App. 3d 499, 502, 285 N.E.2d 179, 181 (1972). Here, defendant's notice of appeal in the case limits the scope of his argument on appeal to whether the trial court erred in its November 16, 2011, order denying defendant's November 1, 2011, motion requesting a hearing on his April 1988 motion to vacate

his guilty plea. See *People v. Priest*, 345 Ill. App. 3d 660, 668, 803 N.E.2d 181, 187 (2003). For the reasons that follow, we find the court did not so err.

¶ 17 "[I]t is the responsibility of the party filing a motion to request the trial judge to rule on it [(citation)]." *People v. Flynn*, 341 Ill. App. 3d 813, 821-22, 792 N.E.2d 527, 535 (2003). Where no ruling has been made on a motion, it is presumed to have been abandoned absent circumstances indicating otherwise. *Flynn*, 341 Ill. App. 3d at 821-22, 813 N.E.2d at 535 (citing *People v. Johnson*, 159 Ill. 2d 97, 123, 636 N.E.2d 485, 497 (1994) (finding the defendant abandoned his motion by failing to pursue it within a reasonable time after it was filed)).

¶ 18 In this case, defendant waited 24 years, until November 2011, to file a motion requesting a hearing on his April 1988 motion to vacate his guilty plea. The record reflects defendant was aware of the 1988 motion during his period of incarceration. Defendant has since served his sentence and MSR term and is no longer in custody in Illinois on the underlying offense. Thus, we find defendant has abandoned his motion by failing to pursue it within a reasonable time after its filing. *Johnson*, 159 Ill. 2d at 123, 636 N.E.2d at 497. While the trial court dismissed defendant's motion by finding "the same issue had previously been decided by this Court[,]" this court reviews the trial court's judgment, not its rationale. *People v. Rodriguez*, 187 Ill. App. 3d 484, 489, 543 N.E.2d 324, 327 (1989). As a result, we can affirm the decision of the trial court for any reason supported by the record. *People v. Buss*, 187 Ill. 2d 144, 205, 718 N.E.2d 1, 35 (1999). Here, the trial court did not err in dismissing defendant's request for a hearing on his 24-year-old motion where he abandoned that motion by failing to pursue it within a reasonable period of time.

¶ 19 III. CONCLUSION

¶ 20 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 21 Affirmed.