2012 IL App (2d) 111132-U
No. 2-11-1132
Order filed July 30, 2012
Modified upon denial of rehearing October 15, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 05-CF-2797
AUGUSTINE T. MONTES,	)	Honorable T. Jordan Gallagher and David R. Akemann,
Defendant-Appellant.	)	Judges, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court, with opinion. Justices Hutchinson and Schostok concurred in the judgment and opinion.

ORDER

¶ 1 On May 5, 2010, defendant, Augustine T. Montes, was convicted *in abstentia* of attempted first degree murder (720 ILCS 5/8-4(a) (West 2006)) and aggravated discharge of a firearm (720 ILCS 5/24-1.1(a)(2) (West 2006)).

¶ 2 Defendant filed four motions for a new trial: (1) on June 4, 2010; (2) an amended motion on June 9, 2010; (3) a second amended motion on October 7, 2010; and (4) a third amended motion on November 8, 2010. On February 4, 2011, the trial court denied defendant's posttrial motions, including motions for a new trial, and sentenced him to concurrent terms of imprisonment.

¶ 3 On March 2, 2011, defendant filed a "motion to reconsider." In its introductory paragraph, the motion asked the court to "reconsider defense counsel's argument for new trial as well as set aside the verdict of guilty, subsequent sentence and to grant defendant a new trial[.]" The nine-paragraph motion alleged that recent decisions reflected that at trial the State failed to lay a proper foundation for admission of an audio recording. The motion concludes, "WHEREFORE, for all the above-stated reasons, defendant respectfully prays that this Honorable Court grant this motion, reconsider the sentence imposed, and grant the defendant a new trial." No substantive argument regarding the sentence was proffered. The trial court ultimately heard and denied the motion to reconsider on October 13, 2011. On November 7, 2011, defendant filed his notice of appeal.

¶ 4 In a motion this court ordered taken with the case, the State argues that we must dismiss the appeal for lack of jurisdiction. Specifically, the State notes that the trial court denied defendant's motions for a new trial and entered sentence on February 4, 2011. Thereafter, defendant did not file a notice of appeal until November 7, 2011, more than 30 days after the judgment. The State argues defendant's motion to reconsider did not toll the period for filing a notice of appeal, and, therefore, that we lack jurisdiction over the appeal. We agree.

¶ 5 Supreme Court Rule 606(b) provides that a defendant's notice of appeal must be filed within "30 days after the entry of the final judgment appealed from or if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion." Ill. Sup. Ct. R. 606(b). Here, the trial court disposed of defendant's motion directed against the judgment, *i.e.*, his motions for a new trial, on February 4, 2011. Defendant did not file his notice of appeal until November 7, 2011, more than 30 days after the court's ruling. Thus, the question is

whether defendant's March 2, 2011, motion to reconsider tolled the period for filing a notice of appeal. For four reasons, we conclude that it did not.

¶ 6 First, if we view defendant's motion to reconsider as an *entirely new* motion for a new trial, then it is untimely as it was filed more than 30 days after the conviction was entered (on May 5, 2010). See 725 ILCS 5/116-1(b) (West 2006) (motion for a new trial must be filed within 30 days of the entry of finding of guilt).

¶ 7 Second, if we view the motion as truly moving the court to *reconsider* its February 4, 2011, order denying the earlier motions for new trial, then it is not a motion attacking the *judgment* but, rather, it is a motion attacking an entirely *different* trial court order (the order denying the motion for a new trial), an order which in no way affects the period for an appeal. This court has explained that "a trial court cannot permit a defendant to file a postjudgment motion directed against the final judgment, rule on it, and then rule on a motion to reconsider the denial of that posttrial motion and thereby extend its jurisdiction and the time for appeal." *People v. Miraglia*, 323 Ill. App. 3d 199, 205 (2001).

¶ 8 Third, to the extent we view the March 2, 2011, motion to reconsider as a *successive* posttrial motion attacking the conviction (which, again, is untimely), the appeal period was not tolled because:

> "Rule 606(b) contemplates the filing of only one postjudgment motion directed against the final judgment, whether it be the conviction or the sentence or both, but the rule does not authorize successive and repetitious motions raising issues that were raised earlier or could have been raised earlier and thereby extend the time for appeal." *Id.* at 205.

This court has further stated that: "Jurisdiction vests in the *appellate* court when the trial court disposes of the successive motion *and* a notice of appeal is filed within 30 days of the denial of the *first motion attacking the judgment.*" (Emphases added.) *People v. Serio*, 357 Ill. App. 3d 806, 817 (2005). Here, the notice of appeal was not filed within 30 days of the denial of the first motion attacking the judgment.

¶ 9 Fourth, the motion to reconsider did not seek reconsideration of the sentence. The motion made no substantive arguments regarding the sentence, and only mentioned the sentence in the motion's introductory and conclusory paragraphs as essentially needing to be vacated or reconsidered if the court accepted defendant's argument that foundational problems required a new trial. Thus, the March 2, 2011, motion was not, under Rule 606(b), a motion attacking the sentence and it did not toll the period for filing a notice of appeal.

¶ 10 Finally, we note that the parties' discussion regarding revestment is misplaced here. Revestment principles, which concern revesting the trial court with jurisdiction, do not apply in this case because, as it was filed within 30 days of the ruling on defendant's posttrial motion, the trial court never lost jurisdiction to rule on the motion to reconsider. See *Serio*, 357 Ill. App. 3d at 817 ("The *trial court* has jurisdiction to rule on a successive postjudgment motion where the successive motion is filed within 30 days of the final disposition of the preceding postjudgment motion. Jurisdiction vests in the *appellate* court when the trial court disposed of the successive motion and a notice of appeal is filed within 30 days of the denial of the first motion attacking the judgment.) (Emphasis in original.) Here, the issue is *appellate* jurisdiction, which is lacking because the November 7, 2011, notice of appeal was filed more than 30 days after the February 4, 2011, ruling, and the intervening motion to reconsider did not toll that period.

¶ 11 Defendant disagrees and asserts that this court's decision in *People v. Minniti*, 373 Ill. App. 3d 55, 66-67 (2007), reflects that revestment is properly applied here. He notes that, per *Minniti*, when both sides actively participate in the hearing of an untimely postjudgment motion, a notice of appeal filed within 30 days of the ruling on the motion vests the appellate court with jurisdiction. However, *Minniti* does not alter our conclusion that revestment is inapplicable here.

¶ 12 Again, and unlike in *Minniti*, where the defendant's motion to reconsider his sentence was filed 38 days after he was sentenced, here, defendant's posttrial motion was timely filed within 30 days of the judgment, and his "motion to reconsider" was timely filed within 30 days after the ruling on the posttrial motion. Thus, as everything was filed within 30 days of the preceding order, the trial court did not lose jurisdiction. As such, the State would not have had reason to object, on jurisdictional grounds, to a hearing on the motion to reconsider. The question, as previously discussed, is simply whether the "motion to reconsider" tolled the time to file the notice of appeal, which was due within 30 days after the ruling on the posttrial motion. For the foregoing reasons, we conclude that it did not.

¶ 13 Finally, defendant mentions in his petition for rehearing that an ineffective-assistance-of-counsel claim may exist. He correctly concedes, however, that we may not consider an argument raised for the first time in a petition for rehearing. Il. Sup. Ct. R. 367(b) (eff. Dec. 29, 2009).

¶ 14 Accordingly, for the foregoing reasons, we grant the State's motion to dismiss for lack jurisdiction and we dismiss the appeal.

¶ 15 Appeal dismissed.