

NOTICE
Decision filed 09/19/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130158-U

NO. 5-13-0158

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Richland County.
)	
v.)	No. 08-CF-149
)	
BRIAN BOULB,)	Honorable
)	Larry D. Dunn,
Defendant-Appellant.)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Stewart and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* Where the defendant failed to file a timely notice of appeal, the appeal must be dismissed for want of jurisdiction.

¶ 2 The defendant, Brian Boulb, appeals his conviction for possession of methamphetamine manufacturing materials. He argues that his conviction must be reversed because the record does not contain a verbatim transcript of his purported waiver of counsel. The State contends that this appeal must be dismissed because notice of appeal was not timely filed and because Boulb failed to comply with Supreme Court Rule 604(d) (eff. July 1, 2006). For the following reasons, we dismiss the appeal.

¶ 3 On September 26, 2008, Boulb was charged with unlawful possession of anhydrous ammonia, unlawful possession of a methamphetamine precursor, and unlawful possession of methamphetamine manufacturing materials. Later that day, Boulb appeared via a computerized video conference and waived appointed counsel. The video conference was not reported or transcribed. On October 3, 2008, Boulb entered a negotiated plea of guilty to possession of methamphetamine manufacturing materials in exchange for a sentence of four years' imprisonment and the State's agreement to dismiss the remaining charges. The court accepted Boulb's plea and sentenced him to four years' imprisonment in accordance with the plea agreement. The court then admonished Boulb pursuant to Supreme Court Rule 605(c) (eff. Oct. 1, 2001) regarding his appeal rights.

¶ 4 On February 9, 2009, Boulb filed *pro se* motions requesting a copy of the transcripts and record, to proceed as a poor person, and seeking the appointment of counsel. The circuit court ordered the court reporter to prepare the transcripts of the October 3, 2008, hearing, but there was no ruling on the other motions.

¶ 5 On March 25, 2013, almost 4½ years after he was sentenced, Boulb filed *pro se* a notice of appeal, a motion to withdraw his guilty plea and vacate the judgment, and a motion requesting an extension of time in which to file an appeal. The circuit court appointed counsel to represent Boulb on his motion to withdraw his guilty plea, but subsequently relieved counsel and appointed the State Appellate Defender to represent Boulb on appeal.

¶ 6 Boulb argues that his conviction must be reversed because the record does not contain a verbatim transcript of his purported waiver of counsel. The State responds that

the appeal must be dismissed because this court lacks jurisdiction and because Boulb failed to timely comply with Supreme Court Rule 604(d). We agree with the State.

¶ 7 Jurisdiction is conferred on the appellate court by the filing of a notice of appeal. Ill. S. Ct. R. 606(a) (eff. Sept. 1, 2006). Supreme Court Rule 606(b) states that, except as provided in Rule 604(d), notice of appeal must be filed within 30 days after the entry of final judgment appealed from or, if a motion against the judgment is timely filed, within 30 days of the entry of the order disposing of that motion. Ill. S. Ct. R. 606(b) (eff. Sept. 1, 2006). Rule 606(b) further provides that, except as provided in Rule 606(c) and Rule 604(d), no appeal may be taken after the expiration of 30 days from the entry of the order or judgment from which the appeal is taken. *Id.* Rule 606(c) allows for the filing of a late notice of appeal in certain circumstances. Ill. S. Ct. R. 606(c) (eff. Sept. 1, 2006). Supreme Court Rule 604(d) provides, *inter alia*, that no appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the imposition of sentence, files a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). If the motion is denied, notice of appeal must be filed within the time allowed in Rule 606, measured from the date of entry of the order denying the motion. *Id.*

¶ 8 In the present case, final judgment was entered on October 3, 2008, when Boulb was sentenced to four years' imprisonment. He did not file either a notice of appeal or a motion directed against the judgment within 30 days. Boulb's notice of appeal, motion to vacate judgment and withdraw his guilty plea, and request for an extension of time in

which to appeal were filed on March 25, 2013, almost 4½ years after he was sentenced and well beyond the 30-day limitation periods specified by Rule 604(d) and Rule 606.

¶ 9 Boulb urges this court to consider the February 9, 2009, pleadings as a timely motion for an extension of time in which to file a notice of appeal. Rule 606(c) provides that:

"On motion supported by a showing of reasonable excuse for failing to file a notice of appeal on time filed in the reviewing court within 30 days of the expiration of the time for filing the notice of appeal, or on motion supported by a showing by affidavit that there is merit to the appeal and that the failure to file a notice of appeal on time was not due to appellant's culpable negligence, filed in the reviewing court within six months of the expiration of the time for filing the notice of appeal, in either case accompanied by the proposed notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing." Ill. S. Ct. R. 606(c) (eff. Sept. 1, 2006).

¶ 10 The documents Boulb filed on February 9, 2009, cannot be reasonably construed as a Rule 606(c) motion. They were filed in the circuit court rather than this court, they do not set forth any excuse for failing to file a timely notice of appeal, they do not allege that there is merit to an appeal and that the failure to timely file a notice of appeal was not due to Boulb's culpable negligence, and they were not accompanied by a proposed notice of appeal. In short, they do not fulfill any of the requirements of Rule 606(c).

¶ 11 Because Boulb failed to file a timely notice of appeal or a timely Rule 606(c) motion requesting an extension of time in which to appeal, this court is without jurisdiction and the appeal must be dismissed.

¶ 12 Even if we had jurisdiction, Boulb's failure to comply with Rule 604(d) would require dismissal of his appeal. Strict compliance with Rule 604(d) is a condition precedent to an appeal from a plea of guilty, and failure to comply with the Rule requires dismissal of the appeal, leaving proceedings under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2012)) as a defendant's only avenue of relief. *People v. Breedlove*, 213 Ill. 2d 509 (2004) (citing *People v. Wilk*, 124 Ill. 2d 93 (1988)). Assuming, *arguendo*, that we had jurisdiction, Boulb's failure to file a Rule 604(d) motion within 30 days of the imposition of sentence would compel us to dismiss the appeal.

¶ 13 For the foregoing reasons, the appeal is dismissed.

¶ 14 Appeal dismissed.