

THIRD DIVISION
November 30, 2016

No. 1-14-3769

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 13 CR 20116
)	14 CR 07905
)	
CHRISTOPHER BELL,)	Honorable
)	Maura Slattery-Boyle,
Defendant-Appellant.)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Defendant's appeal must be dismissed because in case number 13 CR 20116 he failed to file an appeal from the challenged order within 30 days and because in case number 14 CR 07905 he failed to file a postplea motion prior to filing a notice of appeal.
- ¶ 2 On September 11, 2014, defendant Christopher Bell entered a plea of guilty to a violation of probation in case number 13 CR 20116, and a negotiated plea of guilty to possession of a controlled substance in case number 14 CR 07905. He was sentenced to two concurrent three-year prison terms. On appeal, he challenges the imposition of certain fines and fees. We dismiss.

¶ 3 On November 5, 2013, in case number 13 CR 20016, defendant entered a plea of guilty to possession of a controlled substance and was sentenced to 24 months of "410 probation." The trial court admonished defendant, *inter alia*, that even though he entered a plea of guilty, he had the right to file an appeal, that the motion must be filed within 30 days and that in that motion, defendant must ask the trial court to either reconsider the sentence or vacate the judgment and withdraw his plea. The court asked defendant if he understood and defendant stated that he did. The court imposed \$1,329 in fines and fees.

¶ 4 On April 9, 2014, the State filed a petition for a violation of probation hearing based upon the fact that on or about April 8, 2014, defendant committed, in case number 14 CR 07905, the Class X felony of manufacture or delivery of heroin.

¶ 5 On September 11, 2014, defendant entered a plea of guilty to a violation of probation in case number 13 CR 20116, and a negotiated plea of guilty to possession of a controlled substance in case number 14 CR 07905. He was sentenced to two concurrent three-year prison terms. After hearing the factual basis for the plea, the trial court admonished defendant:

"even though you plead guilty and have been found guilty here today, you do have the right to file a Notice of Appeal. That motion must be filed within 30 days of today's court date. In that motion, you must ask the court to either reconsider the sentence or vacate the judgment entered here and withdraw your plea. If you fail to include in that motion any issues or arguments, they are forever waived. If you cannot afford an attorney or transcript, they will be provided to you by the Court."

The court asked defendant if he understood and defendant indicated that he did. The court then imposed \$1,324 in fines and fees.

¶ 6 On December 2, 2014, defendant filed a *pro se* motion seeking to have his mittimus corrected in case number 13 CR 20116, *nunc pro tunc* to September 11, 2014, to reflect 156 days of presentence custody credit. The trial court granted the motion, and a corrected mittimus was issued in case number 13 CR 20116. On December 29, 2014, this court granted defendant's motion for leave to file a late notice of appeal from the trial court's September 11, 2014 order.

¶ 7 On appeal, defendant challenges, for the first time, the imposition of certain fines and fees. Before we can reach defendant's contentions on appeal, however, we must address our jurisdiction. Although neither party addresses this court's jurisdiction to hear defendant's appeal, we have a duty to independently consider our jurisdiction to hear an appeal and must dismiss an appeal if jurisdiction is wanting. See *People v. Garcia*, 2015 IL App (1st) 131180, ¶ 65. See also *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009) ("A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue.")

¶ 8 Defendant first challenges the imposition of certain fines and fees in case number 13 CR 20116. In that case, defendant was sentenced to probation and assessed certain fines and fees on November 5, 2013. He did not file an appeal from that order.

¶ 9 We do not have jurisdiction to consider defendant's challenge to his fines and fees order in case number 13 CR 20016 because defendant did not file an appeal from the entry of the November 5, 2013 order within 30 days. See Ill. S. Ct. R. 606(b) (eff. Feb. 6, 2013) ("notice of appeal must be filed with the clerk of the circuit court 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"). The timely filing of a notice of appeal is both jurisdictional and mandatory. *In re J.T.*, 221 Ill. 2d 338, 346-47 (2006) (generally, on appeal from a revocation of probation where the underlying conviction was on a guilty plea, the appellate court has no jurisdiction to consider challenges to the guilty plea or resulting sentence because those challenges should have been raised in a timely postplea motion and appeal). We therefore lack jurisdiction to consider defendant's challenge to the fines and fees order in case number 13 CR 20116 because no appeal was taken from the November 5, 2013 sentencing order. See *People v. Fitzgerald*, 25 Ill. App. 3d 973, 975 (1975) ("where there has been no appeal from a judgment of conviction and order of probation, such cannot be reviewed on appeal from an order revoking probation").

¶ 10 Defendant next challenges certain fines and fees assessed on September 11, 2014, when he entered a negotiated plea of guilty in case number 14 CR 07905. Defendant did not file a motion to withdraw the plea and vacate the sentence; rather, he filed a notice of appeal in December 2014.

¶ 11 A defendant who wishes to appeal from a judgment entered on a guilty plea must follow the procedure set forth in Supreme Court Rule 604(d) (eff. Feb. 6, 2013), which provides that no appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files either a motion reconsider the sentence, or a motion to withdraw the plea of guilty and vacate the judgment. Compliance with Rule 604(d) is a condition precedent to an appeal, and if the defendant fails to meet this requirement the appeal must be dismissed. *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40 (2011). In those

cases where a defendant appeals without first complying with Rule 604(d), and the circuit court failed to give the proper admonishments set forth in Rule 605, the appeal is not dismissed but remanded to the circuit court for strict compliance with Rule 604(d). *People v. Flowers*, 208 Ill. 2d 291, 301 (2004).

¶ 12 In case 14 CR 07905, defendant entered a negotiated guilty plea, and, consequently, the trial court was required to admonish him in accordance with Supreme Court Rule 605(c) (eff. Oct. 1, 2001). Defendant does not challenge the admonishments he received and has therefore forfeited this claim on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (points not argued are waived). Additionally, we have examined the record, and find that defendant was admonished in substantial compliance with the requirements of Rule 605(c). See *People v. Dominguez*, 2012 IL 111336, ¶ 11. Because we have found that defendant was substantially admonished in accordance with Rule 605(c), yet failed to comply with Rule 604(d) before filing a notice of appeal, we cannot consider his appeal in case number 14 CR 07905 on the merits; rather, we must dismiss it. See *Flowers*, 208 Ill. 2d at 301.

¶ 13 Accordingly, we do not have jurisdiction to review defendant's challenge to the fines and fees order in case number 13 CR 20166 because defendant did not file an appeal within 30 days of the November 5, 2013 order, and we cannot consider defendant's challenge to the fines and fees order in case number 14 CR 07905 because defendant did not file a postplea motion within 30 days of the entry of his guilty plea. We therefore dismiss defendant's appeal.

¶ 14 Appeal dismissed.