

2016 IL App (4th) 140452-U

NO. 4-14-0452

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 19, 2016

Carla Bender

4th District Appellate
Court, IL

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macoupin County
ELMER WOOD,)	No. 98CF259
Defendant-Appellant.)	
)	Honorable
)	John A. Mehlick,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding (1) the trial court properly dismissed defendant's postjudgment filing for lack of jurisdiction; and (2) this court lacked the jurisdiction to consider the merits of an issue raised for the first time on appeal, namely, defendant's request to amend the *mittimus*.

¶ 2 In March 2014, defendant, Elmer Wood, filed a "Petition for Findings of Unconstitutionality," challenging the period of mandatory supervised release (MSR) imposed during his January 2003 guilty-plea proceedings. In May 2014, the trial court dismissed defendant's petition for lack of jurisdiction.

¶ 3 Defendant appeals, requesting, for the first time on appeal, this court amend the *mittimus* to accurately reflect his presentence custody credit. The State, in turn, challenges this court's jurisdiction to hear defendant's claim. For the following reasons, we affirm the trial court's dismissal.

¶ 4

I. BACKGROUND

¶ 5 In January 2003, defendant entered into a fully negotiated plea agreement wherein he entered a plea of guilty to first degree murder of a person under the age of 12 in exchange for a sentence of 38 years' imprisonment. As part of the agreement, he received credit for serving 1,513 days in pretrial custody. However, the record reflects defendant actually spent 1,524 days in pretrial custody.

¶ 6 In March 2014, defendant filed a "Petition for Findings of Unconstitutionality," asserting the period of MSR imposed upon him was unconstitutional. In May 2014, the trial court denied defendant's petition, finding it lacked jurisdiction to consider defendant's untimely petition, filed 11 years after his plea of guilty.

¶ 7 Later that month, defendant filed a *pro se* letter with the circuit clerk, requesting the clerk file a notice of appeal on his behalf regarding the trial court's May 2014 denial of his petition. However, the notice of appeal filed by the circuit clerk states defendant sought to challenge his January 2003 conviction.

¶ 8 This appeal followed.

¶ 9

II. ANALYSIS

¶ 10 On appeal, defendant does not challenge the trial court's finding that it lacked jurisdiction over his challenge to the period of MSR. Rather, defendant raises an entirely new argument, asking this court to amend the *mittimus* to reflect sentencing credit for 1,524 days rather than 1,513 days, citing a mutual mistake by the parties. The State, in turn, argues this court is without jurisdiction to hear this claim where the trial court lacked jurisdiction over the original claim. We begin by addressing the jurisdictional claims.

¶ 11 The State first argues we lack jurisdiction to hear defendant's appeal because his notice of appeal was untimely. See Ill. S. Ct. R. 604(d) (eff. Nov. 1, 2000) (an appeal challenging a plea of guilty must be filed within 30 days following the trial court's denial of a motion to withdraw the guilty plea). Specifically, the State points out the notice of appeal filed by the circuit clerk's office states defendant sought to appeal his January 2003 conviction and sentence. Clearly, if defendant sought to appeal his 2003 guilty plea, the notice of appeal would have been untimely. See *id.* Where a defendant's notice of appeal is untimely, this court lacks jurisdiction to consider the merits of the appeal. See *People v. Green*, 188 Ill. App. 3d 1027, 1030, 544 N.E.2d 1307, 1309 (1989) ("A timely notice of appeal is still necessary for the appellate court to obtain jurisdiction.").

¶ 12 Although the notice of appeal by the circuit clerk indicates defendant sought to appeal his 2003 conviction, defendant's *pro se* notice of appeal to the circuit clerk indicated he wished to appeal the trial court's May 2014 order regarding his "Petition for Findings of Unconstitutionality." The circuit clerk's notice of appeal clearly contained a scrivener's error where it incorrectly wrote the date of the judgment defendant sought to appeal. A scrivener's error does not create a fatal defect in a notice of appeal. See *In re Marriage of Crecos*, 2015 IL App (1st) 132756, ¶ 17, 38 N.E.3d 80. This scrivener's error does not impede this court's ability to ascertain from the record that defendant sought to challenge the court's May 2014 order. *Id.*

¶ 18. Moreover, in its brief, the State clearly understood and addressed the court order defendant sought to challenge, thus showing neither party was prejudiced by this mistake. *Id.*

Accordingly, we conclude defendant's notice of appeal was timely filed.

¶ 13 The State next asserts our jurisdiction is limited to whether the trial court properly dismissed defendant's claim for lack of jurisdiction. See *People v. Flowers*, 208 Ill. 2d 291, 307,

802 N.E.2d 1174, 1184 (2003) (where the trial court lacks jurisdiction over a defendant's motion, the appellate court lacks the authority to consider the merits of the appeal from a judgment denying that motion). Defendant does not challenge, or even address, whether the court properly dismissed his claim for lack of jurisdiction. Thus, that claim is forfeited on appeal. See Ill. S. Ct. R. 341(h) (eff. Feb. 6, 2013) (issues not argued in the opening brief are forfeited). We therefore affirm the trial court's dismissal of defendant's petition.

¶ 14 Despite the jurisdictional issue, defendant argues, for the first time on appeal, that this court should amend the *mittimus* to reflect an additional 11 days of sentencing credit. In doing so, defendant contends the parties made a mutual mistake by giving defendant 1,513 days of sentencing credit when the record clearly reflects he was in custody for 1,524 days.

Defendant asserts this court is permitted to consider the merits of this newly raised issue "in the interests of an orderly administration of justice" and treat his request as a motion to amend the *mittimus*, as a *mittimus* (*i.e.*, the written sentencing order) can be amended at any time. *People v. Wren*, 223 Ill. App. 3d 722, 731, 585 N.E.2d 1216, 1222 (1992).

¶ 15 Defendant's argument, however, fails to recognize the importance of the trial court's jurisdiction in determining appellate court jurisdiction. Although "Illinois courts have held that a trial court's lack of jurisdiction is not a complete bar to the exercise of jurisdiction by the appellate court," the appellate court is restricted to considering only the issue of the trial court's jurisdiction. *People v. Bailey*, 2014 IL 115459, ¶ 29, 4 N.E.3d 474. We are therefore limited to determining whether the court had jurisdiction over defendant's "Petition for Findings of Unconstitutionality," an issue we have already deemed forfeited. Accordingly, we lack the jurisdiction to address the merits of any new issues defendant raises for the first time on appeal.

¶ 16

III. CONCLUSION

¶ 17 For the foregoing reasons, we affirm the trial court's dismissal of defendant's petition for lack of jurisdiction and decline to consider the newly raised issue. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 18 Affirmed.