

2017 IL App (1st) 160129-U

No. 1-16-0129

Order filed June 28, 2017

Third Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 04 CR 18349
)	
JUAN RODRIGUEZ,)	Honorable
)	Michael B. McHale,
Defendant-Appellee.)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* We vacate the trial court’s order denying defendant’s “motion to vacate guilty plea” based on the trial court’s lack of jurisdiction. We dismiss defendant’s appeal because we lack jurisdiction to consider the merits of defendant’s attack on his guilty plea where he failed to file a timely postplea motion under Illinois Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 2 Defendant Juan Rodriguez pled guilty in two separate cases to possession of a controlled substance (720 ILCS 570/402(c) (West 2004)) and aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2004)), and was sentenced to two years of

probation and 28 days of community service in each case, to be served concurrently. The trial court subsequently vacated defendant's conviction for AUUW in 2015, pursuant to *People v. Aguilar*, 2013 IL 112116, but denied his "motion to vacate" his guilty plea for possession of a controlled substance. On appeal, defendant contends that the trial court erroneously denied his motion to vacate his guilty plea. For the following reasons, we vacate the trial court's order, order the trial court to dismiss defendant's motion to reconsider, and dismiss his appeal for lack of jurisdiction.

¶ 3 Defendant was charged in the instant case with possessing a controlled substance on or about June 20, 2004. While out on bail for that offense, on September 5, 2004, defendant was found in possession of a firearm and charged with AUUW in case number 04 CR 22742. On January 19, 2005, defendant pled guilty to each offense, and the trial court sentenced defendant to two years of probation and 28 days of community service for each case, to be served concurrently.

¶ 4 Over 10 years later, in 2015, defendant moved to vacate his AUUW conviction pursuant to *People v. Aguilar*, 2013 IL 112116. On June 23, 2015, defendant additionally filed a "motion to vacate guilty plea" with respect to his conviction in the instant case, possession of a controlled substance, arguing that the arresting officer in his possession case was indicted for a repeated pattern of unlawful arrests. He also asserted he should be restored to the position he was in prior to the "void judgment" obtained when he pled guilty to the unconstitutional AUUW offense.

¶ 5 In a hearing on August 20, 2015, the court vacated defendant's conviction for AUUW in light of *People v. Aguilar*, 2013 IL 112116, ¶ 22, which held that the AUUW statute was unconstitutional.

¶ 6 In the same hearing, in support of defendant's motion to vacate his guilty plea, defense counsel argued that defendant agreed to plead guilty to possession only because the sentences for each case were to run concurrently so there was essentially no penalty for his possession conviction. Defense counsel then claimed that the possession case was dependent on the AUUW conviction and that the State could not have proved the possession case. The court disagreed, finding that defense counsel's argument was "utterly speculative." It denied defendant's motion regarding the possession conviction, finding,

"Looking at your two-page motion, you don't cite a single case or authority. This is a separate plea apart from the gun case. He plead guilty. There was a factual basis. All of the things were done the way they were supposed to.

Unlike the gun case, this statute regarding the drugs has not been found unconstitutional. Thus, it is not a void conviction. Thus, I don't even have any authority to vacate it in my opinion."

¶ 7 On September 16, 2015, defendant filed a motion to reconsider the court's denial of the motion regarding his possession conviction. He filed an amended motion to reconsider on September 29, 2015.

¶ 8 On November 24, 2015, the court heard arguments on defendant's amended motion to reconsider. Defense counsel argued that the possession case was dependent on the AUUW case, and, without the AUUW case, defendant's plea agreement, if any, would have been different. Counsel asserted that, as the AUUW conviction had been vacated, the plea to the possession conviction should also be vacated. The State responded that the trial court lacked jurisdiction to consider vacating or allowing defendant to withdraw his guilty plea for possession because the

plea was 10 years old, and the 30-day jurisdictional window following the entry of the plea and sentence had lapsed. Additionally, the State argued that the conviction for possession was separate and distinct from the conviction for AUUW.

¶ 9 Following arguments, the court stated,

“All of the cases as you pointed out, [defense] counsel, are factually distinguishable because they are all involving one case and this is not -- none of those cases have a [concurrent] plea situation. So you’re asking me to do something that there is apparently no precedent for. I have already dismissed the gun case per *Aguilar* and the expired statute of limitations. The drug case was [a] completely separate case. Given that I don’t have any case to rely on, I agree with the [S]tate. I don’t think I even have jurisdiction on this drug case. It’s a separate case. Separate and apart from the gun case. I don’t have anything to rely on. So the amended motion to reconsider is respectfully denied. Take it up to the appellate court. And maybe they will set the precedent. But I don’t have jurisdiction. So I am going to deny your motion.”

¶ 10 This appeal followed.

¶ 11 On appeal, defendant contends the trial court erroneously denied his “motion to vacate guilty plea” with respect to his possession of a controlled substance conviction. The State counters that the court properly denied defendant’s motions to reconsider and vacate the guilty plea because the court lacked jurisdiction where defendant failed to file a timely postplea motion pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). Defendant did not file a reply brief and does not address the trial court’s jurisdiction in his opening brief.

¶ 12 Although defendant argues the merits of his motions, we must first address the jurisdictional issues that have arisen in this case. Generally, a trial court loses jurisdiction 30 days following the entry of a final judgment. *People v. Bailey*, 2014 IL 115459, ¶ 26. A trial court's lack of jurisdiction is not a complete bar to a reviewing court's exercise of jurisdiction. *Id.* at ¶ 29. Rather, our review is limited to considering the issue of jurisdiction below. *Id.*; see also *People v. Flowers*, 208 Ill. 2d 291, 307 (2003); *People v. Vasquez*, 339 Ill. App. 3d 546, 553 (2003); *People v. Vinokur*, 2011 IL App (1st) 090798, ¶ 18.

¶ 13 In the instant case, the trial court accepted defendant's guilty plea and sentenced him on January 19, 2005. Defendant, therefore, had 30 days in which to file a motion to withdraw his guilty plea. Ill. S.Ct. R. 604(d) (eff. July 2, 2006). Because he took no such action, and because imposition of sentence is a final judgment, (*People v. Harrison*, 372 Ill. App. 3d 153, 155 (2007)), the trial court was divested of jurisdiction 30 days following the entry of this order (*Bailey*, 2014 IL 115459, ¶ 26). Defendant did not move to "vacate" his guilty plea until 10 years later in 2015, far beyond the trial court's 30-day jurisdictional window. Accordingly, we conclude that the trial court lacked jurisdiction to consider defendant's "motion to vacate guilty plea" in 2015.

¶ 14 Although the trial court acknowledged it lacked jurisdiction, it nevertheless, after hearing arguments on the merits, denied defendant's motion, which amounted to a ruling on the merits. See *Bailey*, 2014 IL 115459, ¶ 27 (finding that, where the trial court lacked jurisdiction, it was improper for the court to deny the defendant's motion to vacate his plea and sentence on the merits). The correct procedure was instead to dismiss defendant's motion for lack of jurisdiction. *Id.* We therefore vacate the trial court's order denying defendant's motion. See *id.* at ¶¶ 28-29

(noting that where the trial court lacks jurisdiction, its ruling on the merits of a motion is void and the appellate court should vacate the order, rather than simply dismissing the appeal for lack of jurisdiction).

¶ 15 Putting aside the fact that the trial court improperly addressed the merits of defendant's motion to vacate his guilty plea, we further note that, although we have jurisdiction to review the trial court's jurisdiction (*Bailey*, 2014 IL 115459, ¶ 29), we have no authority to review the merits of defendant's appeal concerning whether the court erred by denying the motion. Ill. S.Ct. R. 604(d) (eff. July 1, 2006). Under Rule 604(d), to appeal a judgment entered upon a guilty plea, the defendant must, within 30 days of the date on which sentence is imposed, file a written motion to withdraw the plea in the trial court. Ill. S.Ct. R. 604(d) (eff. July 1, 2006). Here, defendant failed to file a motion to withdraw his plea in the trial court within 30 days of January 19, 2005 and instead filed a motion attacking his guilty plea 10 years after the trial court's judgment. Accordingly, we dismiss defendant's appeal. See *Flowers*, 208 Ill. 2d at 307 (where the trial court lacked jurisdiction to entertain an untimely Rule 604(d) motion, the appellate court should have vacated the trial court's judgment and dismissed the appeal).

¶ 16 Vacated; appeal dismissed.