

No. 1-16-1550

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
Respondent-Appellee,)	Cook County
)	
v.)	No. 11 CR 5122
)	
MAURICE WILLIAMS,)	Honorable
)	Charles P. Burns,
Petitioner-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 **Held:** We dismiss petitioner's appeal stemming from the dismissal of his postconviction petition. Petitioner's notice of appeal was not timely filed and we therefore lack jurisdiction to consider the merits of the appeal.

¶ 2 Petitioner-appellant, Maurice Williams, was arrested and convicted of three counts of criminal sexual assault based on three different types of penetration. Petitioner was also convicted of kidnapping. The trial court then sentenced him to five years' imprisonment for each

of the three sexual assaults and three years' imprisonment for kidnapping. The sentences were to be served consecutively. On direct appeal, this court affirmed both his conviction and sentence.

¶ 3 In January 2016, petitioner filed a *pro se* postconviction petition. The petition advanced five separate claims alleging either ineffectiveness of trial counsel or ineffectiveness of appellate counsel. After reviewing each claim, the trial court determined the issues were barred because they were not raised on direct appeal or they were contradicted by the record. This appeal follows.

¶ 4 Petitioner raises one issue on appeal. He argues the trial court erred in dismissing his postconviction petition at the first stage because his claims of ineffective assistance of counsel were not frivolous or patently without merit.

¶ 5 After reviewing the record, we must dismiss petitioner's appeal because his notice of appeal was not timely filed. The record also lacks key documents which would assist in establishing the jurisdiction of this court.

¶ 6 JURISDICTION

¶ 7 As discussed in the Analysis section, we lack jurisdiction over this appeal.

¶ 8 BACKGROUND

¶ 9 The facts of this case are adequately set forth in this court's order in the petitioner's direct appeal (*People v. Williams*, 2015 IL App (1st) 130196-U) and will be repeated only where necessary for the disposition of this postconviction appeal.

¶ 10 After this court affirmed both his conviction and sentence for criminal sexual assault and kidnapping, petitioner timely filed a *pro se* postconviction petition on January 27, 2016. The petition advanced five separate claims alleging either ineffectiveness of trial counsel or appellate counsel on direct appeal. The claims included: (1) trial counsel was ineffective because he

refused to let petitioner have a jury trial, threatening to withdraw from petitioner's case unless petitioner waived his right to a jury therefore causing petitioner to waive his right under duress; (2) trial counsel failed to conduct any type of investigation to support petitioner's defense that he had consensual sexual relations with the victim; (3) trial counsel provided ineffective assistance when he failed to interview witnesses who would have supported the petitioner's claims that the victim was a neighborhood prostitute who was exchanging sex for money and drugs; (4) trial counsel provided ineffective assistance by not pursuing a plea deal prior to trial; (5) appellate counsel provided ineffective assistance by failing to raise trial counsel's failure to bring a motion to dismiss based on the State's failure to allege the offense of criminal sexual assault and kidnapping; and (6) petitioner was denied effective assistance of appellate counsel when counsel failed to argue on direct appeal that the State failed to prove him guilty of the charges beyond a reasonable doubt. The petition was supported by affidavits from the petitioner and his mother, Latonya Williams Vortes.

¶ 11 On April 8, 2016, the trial court dismissed petitioner's *pro se* postconviction petition at the first stage. In its order, the court initially determined each claim had been waived or barred by the doctrine of *res judicata*. The court went further and determined all of the claims were also substantially rebutted by the record. Based on its findings, the court dismissed the petition as frivolous and patently without merit.

¶ 12 This appeal followed.

¶ 13 ANALYSIS

¶ 14 After reviewing the record in this matter, we are unable to reach the merits of petitioner's appeal because petitioner failed to file his notice of appeal within the requisite 30 days after the trial court's dismissal.

¶ 15 It is the duty of this court to consider the matter of jurisdiction *sua sponte* and to dismiss an appeal on its own motion when proper jurisdiction is lacking. *People v. Trimarco*, 364 Ill. App. 3d 549, 550 (2006). Supreme Court Rule 651 governs appeals in postconviction proceedings and states that the procedure for postconviction appeals shall be in accordance with the rules governing criminal appeals. Ill. S. Ct. R. 651 (eff. Feb. 6, 2013). Supreme Court Rule 606 provides in relevant part “notice of appeal must be filed with the clerk of the trial 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.” Ill. S. Ct. R. 606(b) (eff. Dec. 11, 2014). Rule 606 goes on to state that “[e]xcept as provided in paragraph (c) below, and in Rule 604(d), no appeal may be taken from a trial court to a reviewing court after the expiration of 30 days from the entry of the order or judgment from which the appeal is taken.” *Id.*

¶ 16 In this matter, the record demonstrates the notice of appeal was filed on the 33rd day after the dismissal by the trial court. The trial court entered its dismissal order on April 8, 2016. Thirty days from April 8, 2016 would be May 8, 2016, which was a Sunday. Accordingly, the last day on which petitioner could have timely filed a notice of appeal would be Monday, May 9, 2016. The notice of appeal indicates it was filed on May 11, 2016.

¶ 17 The record also lacks key documents which would aid in establishing the jurisdiction of this court. Some appellate courts have applied the mailbox rule to the filing of a postconviction petition. *People v. Maclin*, 2014 IL App (1st) 110342, ¶ 21; *People v. Maiden*, 2013 IL App (2d) 120016, ¶ 16. Courts may invoke the mailbox rule to determine a petition was timely filed if the record contains a legible postmark. *People v. Hansen*, 2011 IL App (2d) 081226, ¶¶ 13-14. The

record does not contain the mailing envelope in which petitioner mailed the postconviction petition to the clerk of the circuit court, so petitioner cannot take advantage of the mailbox rule.

¶ 18 The record also lacks a certificate or affidavit of mailing. In *People v. Lugo*, 391 Ill. App. 3d 995 (2009) (McLaren, J., dissenting), this court rejected the use of the mailbox rule and held that the use of a postmark was insufficient to establish jurisdiction. After analyzing the interplay between Rule 373 and Rule 12(b)(3), the court concluded the rules do not allow for the utilization of a postmark to establish jurisdiction. *Id.* *Lugo* held the applicable rules required proof of mailing in the form of a certificate or affidavit of mailing. See *Id.*; see also *People v. Tlatenchi*, 391 Ill. App. 3d 705, 713 (2009) (requiring strict compliance with Rule 12(b)(3)). Petitioner did not attach a certificate or affidavit of mailing to his postconviction petition. He is therefore unable to establish jurisdiction pursuant to *Lugo*.

¶ 19 We make no determination as to whether *Maclin* or *Lugo* represents the correct state of the law in the Illinois, because petitioner cannot meet the criteria under either cases' analysis.¹ Accordingly, petitioner cannot establish this court has jurisdiction to review the merits of his appeal.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, absent a supervisory order from the supreme court, this court does not have jurisdiction to review the merits of the dismissal of petitioner's *pro se* postconviction petition.

¶ 22 Dismissed.

¹ We recognize the notice of appeal does contain two "received by" stamps. One indicates the notice of appeal was received by the clerk of the circuit court on April 26, 2016, while the other stamp indicates it was received by the clerk on May 11, 2016 (the same day indicated by the file stamp). Given the conflict and lack of supporting documentation we cannot resolve the conflicting dates. Moreover, appellant's brief, the various motions and appeal certificate filed with this court state the notice of appeal was filed on May 11, 2016.