

2018 IL App (1st) 171324-U

No. 1-17-1324

November 21, 2018

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-Appellee,)	Cook County.
)	
v.)	No. 38003388
)	
LAWRENCE OSBORNE,)	Honorable
)	Clare J. Quish,
Defendant-Appellant.)	Joanne F. Rosado
)	Judges Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* We dismiss defendant's appeal for lack of appellate jurisdiction where he failed to file, within 30 days of final judgment, a timely notice of appeal pursuant to Illinois Supreme Court Rule 606(b) (eff. Dec 11, 2014).

¶ 2 Following a bench trial, defendant Lawrence Osborne was found guilty of driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2012)) and other traffic-related offenses. He was sentenced to 12 months' conditional discharge. On appeal, he argues an

improper foundation was laid for a police officer's testimony and the evidence was insufficient to prove him guilty of DUI. We dismiss.

¶ 3 As an initial matter, the State asserts that this court lacks jurisdiction because defendant's notice of appeal was filed 31 days after final judgment was entered and was therefore untimely. Defendant has not filed a reply brief responding to this assertion. In his opening brief, under "Jurisdictional Statement," he writes:

"The Defendant was found guilty after a bench trial on August 2, 2016. A Motion to Reconsider was Denied on October 12, 2016. The matter was continued to May 1, 2017 for evaluation and sentencing. The Notice of Appeal was timely filed with the Clerk of the Circuit Court on June 1, 2017."

¶ 4 The record on appeal supports the facts contained in defendant's jurisdictional statement, but not his conclusion that his notice of appeal was timely filed. On August 2, 2016, the trial court found defendant guilty of DUI and other traffic-related offenses. After a hearing, it denied defendant's motion to reconsider on October 12, 2016.¹ On May 1, 2017, the court sentenced defendant to, *inter alia*, 12 months' conditional discharge for DUI.² The court set a termination date of April 30, 2018. The record does not reflect that a motion to reconsider sentence was filed.

¶ 5 Defendant then filed a notice of appeal, file stamped June 1, 2017, by the "Clerk of the Circuit Court, Traffic Division, Dorothy Brown."³ The notice of appeal does not reflect that it was mailed, and the record does not contain any proof-of-mailing documentation. See *Huber v.*

¹ Defendant's motion to reconsider is not contained in the record on appeal.

² The transcript of the sentencing hearing is not contained in the Report of Proceedings included in the record on appeal. The Record of Proceedings contains only the transcripts of the trial and the hearing on the motion to reconsider.

³ The copy of the notice of appeal contained in this court's file has the same file stamp of the clerk of the circuit court, as well as this court's own file stamp of June 6, 2017.

American Accounting Ass'n, 2014 IL 117293, ¶¶ 11-12. The notice of appeal lists defendant's name and address as well as the name and address of the "Appellant Attorney." The notice of appeal does not list "the date judgment/order appealed from" or anything under "Relief sought from Reviewing Court." The signature is illegible and different from appellate counsel's signature contained in her affidavit in support of a motion for an extension of time to file an appellant's brief.

¶ 6 Illinois Supreme Court Rule 606(b) (eff. Dec. 11, 2014) governs appeals in criminal cases, postconviction cases, and juvenile court proceedings. It provides,

"Except as provided in Rule 604(d), the 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."⁴ Ill. S. Ct. R. 606(b).

"In a criminal case, the entry of a sentence constitutes the final judgment in the case." *People v. Salem*, 2016 IL 118693, ¶ 12.

¶ 7 Here, the final judgment from which defendant appealed was entered at sentencing on May 1, 2017, and defendant did not file a postjudgment motion directed at his sentence. Therefore, in order for defendant's notice of appeal to be timely, defendant was required to file it within 30 days after May 1, 2017. Defendant thus had until May 31, 2017, to file his notice of appeal. Defendant filed his notice of appeal on June 1, 2017, 31 days after final judgment was entered. Therefore, his notice of appeal was untimely.

⁴ Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016) governs appeals from a judgment entered upon a plea of guilty and is, therefore, not relevant to defendant's appeal.

¶ 8 A timely filed notice of appeal is a jurisdictional prerequisite initiating appellate review. See *People v. Smith*, 228 Ill. 2d 95, 104 (2008). “Unless there is a properly filed notice of appeal, a reviewing court has no jurisdiction over the appeal and is obliged to dismiss it.” *Id.* Because defendant did not file a timely notice of appeal, we lack jurisdiction and must dismiss his appeal. See *Salem*, 2016 IL 118693, ¶¶ 16, 25; See *Smith*, 228 Ill. 2d at 104.

¶ 9 Although defendant filed his notice of appeal only one day after the filing deadline had passed, our supreme court has emphasized that “the appellate court does not have the authority to excuse the filing requirements of the supreme court rules governing appeals.” *Secura Insurance Co v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 217-18 (2009); accord *Salem*, 2016 IL 118693, ¶ 19. Thus, defendant’s untimely appeal must be dismissed. See *In re C.J.*, 325 Ill. App. 3d 502, 506 (2001) (in the context of a civil case, dismissing the respondent’s appeal where the notice of appeal was filed 31 days after the final order was entered).

¶ 10 Moreover, there is no basis to construe defendant’s untimely filed notice of appeal as a motion for leave to file a late notice of appeal pursuant to Supreme Court Rule 606(c). Rule 606(c) provides that the appellate court may allow a late notice of appeal, within the six months following the original notice of appeal deadline, upon motion by the defendant. Ill. S. Ct. R. 606(c). The motion must show “reasonable excuse for failing to file a notice of appeal on time” or be “supported by 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.” *Id.* Defendant has not filed an affidavit explaining his late notice of appeal or otherwise attempted to meet the requirements of that rule, and we decline to *sua sponte* consider an extended deadline. See *Salem*, 2016 IL 118693, ¶¶ 18-19.

¶ 11 If defendant wishes to appeal his conviction and sentence, he must seek a supervisory order from our supreme court directing us to consider the merits of his appeal. See Ill. S. Ct. R. 383 (eff. July 1, 2017); Ill. Const. 1970, art. VI § 16; *People v. Lyles*, 217 Ill. 2d 210, 220 (2005).

¶ 12 For the reasons set forth above, we dismiss defendant's appeal for lack of jurisdiction.

¶ 13 Appeal dismissed.