

NOTICE
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2018 IL App (5th) 160012-U

NO. 5-16-0012

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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 the
)	Circuit Court of
Plaintiff-Appellee,)	Edwards County.
)	
v.)	No. 14-CF-31
)	
ASHLEY ROOSEVELT,)	Honorable
)	David K. Frankland,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE BARBERIS delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for lack of appellate jurisdiction where notice of appeal was untimely filed following the circuit court's final judgment.

¶ 2 The defendant, Ashley Roosevelt, appeals the circuit court's denial of a posttrial motion for a new trial arguing that the court erred in denying her pretrial motion to quash arrest, suppress evidence, and dismiss the charges against her. The defendant's appeal is dismissed for a lack of appellate jurisdiction.

¶ 3 I. Background

¶ 4 On October 27, 2014, the defendant was a passenger in a vehicle that was stopped for a seat belt violation. After a narcotics-detection dog alerted the presence of drugs, a

search of the vehicle uncovered a small amount of cannabis and cannabis paraphernalia. A subsequent search of the defendant's purse revealed a small amount of methamphetamine and two prescription pills. The defendant was arrested and charged by information with unlawful possession of methamphetamine (720 ILCS 646/60(b)(2) (West 2014)),¹ two counts of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2014)) and unlawful possession of cannabis (720 ILCS 550/4(a) (West 2014)).

¶ 5 On December 19, 2014, the defendant filed a motion to quash arrest, suppress evidence, and dismiss the charges against her. The defendant alleged that the officers lacked a sufficient reason to "inspect" the vehicle based on a seat belt violation and, in the alternative, that "Deputy Sager did not have valid reasonable suspicion nor probable cause to search said vehicle."

¶ 6 On February 3, 2015, the following evidence was adduced at a hearing on the defendant's motion. Sean Sager, Edwards County deputy sheriff and certified canine officer, testified to the following. The defendant was a back seat passenger of a vehicle occupied by three other adults and an infant. On October 27, 2014, Sager conducted a

¹The information stated that the defendant was in violation of 720 ILCS 646/60(b)(2) (West 2014) for the unlawful possession of methamphetamine. Under section 60(b)(2) of the Methamphetamine Control and Community Protection Act (Act), a person who "possesses 5 or more grams but less than 15 grams of methamphetamine *** is guilty of a Class 2 felony." We note, however, that the information stated that the defendant had committed "a class 3 felony" in that said defendant "knowingly possessed less than 5 grams of methamphetamine." As such, the reference points to the penalty provision in section 60(b)(1) of the Act for a Class 3 felony (720 ILCS 646/60(b)(1) (West 2014)). Prior to trial, the circuit court admonished the defendant of the range of penalties for a Class 3 felony. Lastly, People's Exhibit 1, the forensic lab report from the Illinois State Police, indicated that the methamphetamine weighed 0.2 grams. Thus, we note that the defendant was incorrectly sentenced on a Class 2 felony although she did not raise these discrepancies in a posttrial motion or on appeal.

traffic stop of the vehicle after he observed that the driver was not wearing a seat belt. As Sager approached the vehicle, he noticed that the driver had put on her seat belt. After obtaining her driver's license, Sager returned to his squad car, and Sergeant Jess Burley, Edwards County deputy sheriff, maintained constant observation from the rear of the vehicle. During that time, Burley saw the driver reach between the door frame and the driver's seat and then extend her left hand back to the rear passenger area. Although Sager had initially intended to give a warning, he conducted an open air canine sniff of the vehicle after learning of Burley's observation.

¶ 7 With regard to the prepping procedure for the canine sniff, Sager instructed the driver to turn the ignition key to the "on" position but not to start the car. Sager directed the driver to open the vents, turn the ventilation fan to the highest setting, roll up the windows, and remain in the car. As the narcotics-detection dog approached the driver's door, the dog alerted the officers to the presence of drugs. According to Sager, the canine sniff took roughly five minutes. A small amount of cannabis and cannabis paraphernalia were discovered inside the vehicle and methamphetamine and two different prescription pills were obtained from inside the defendant's purse. The defendant was then placed under arrest.

¶ 8 Following the hearing, the circuit court entered an order on February 3, 2015, denying the defendant's motion to quash arrest, suppress evidence, and dismiss the charges against her. In doing so, the court found that the traffic stop was proper and the canine sniff was permissible, given that it did not unreasonably prolong the stop. The court noted that the narcotics-detection dog was already at the scene, which allowed the

process to begin very quickly, and that the Illinois Supreme Court had upheld similar prepping procedures in *People v. Bartelt*, 241 Ill. 2d 217 (2011).

¶ 9 At the pretrial hearing on June 2, 2015, the defendant waived her right to a jury trial. In exchange, the parties agreed to a stipulated bench trial and further stipulated that the evidence was sufficient to convict the defendant on all four offenses. Moreover, the parties agreed that, at sentencing, the State would request that the defendant receive first-offender's probation with a limited jail sentence.

¶ 10 On June 5, 2015, the circuit court held the defendant's bench trial. At trial, the parties stipulated to the evidence adduced at the February 3, 2015, hearing, and that the State's exhibit 1, a forensic lab report from the Illinois State Police confirming that the tested substances were controlled substances, would be introduced. The defendant also renewed her earlier arguments in support of her December 19, 2014, motion. Following the stipulated bench trial, the defendant was found guilty on all four offenses.

¶ 11 On July 7, 2015, the circuit court sentenced the defendant, as a first-time offender, to concurrent sentences of 24 months' probation for the felony offenses, 30 days' court supervision for the misdemeanor cannabis offense and six months in jail, stayed pending review. The defendant was also ordered to pay mandatory drug assessments and court fees.

¶ 12 On August 5, 2015, the defendant filed a posttrial motion for a new trial requesting the circuit court to reconsider its February 3, 2015, ruling. On August 6, 2015, however, the defendant filed an amended posttrial motion with two additional allegations not initially contained in either the December 19, 2014, pretrial motion or the August 5,

2015, posttrial motion. The two additional allegations stated that (1) "the set-up procedures employed by the officers prior to the canine's 'sniff' of the vehicle where [sic] not constitutionally permitted and where [sic] not reasonable" and (2) her detention, prior to the canine sniff and during the prepping procedures, violated the United States and Illinois Constitutions.

¶ 13 On August 28, 2015, the circuit court convened a hearing on the August 6, 2015, amended posttrial motion. Following argument, the court denied the motion on the merits and admonished the defendant of her right to an appeal.

¶ 14 On September 25, 2015, the defendant filed her initial notice of intent to appeal. On October 9, 2015, however, the circuit court entered an order striking the defendant's notice of appeal pursuant to Illinois Supreme Court Rule 606(b) (eff. Dec. 11, 2014) under the mistaken belief that the defendant's August 6, 2015, amended posttrial motion was still pending. After receiving the October 9, 2015, order, this court dismissed the appeal on October 13, 2015. The defendant did not file responsive pleadings to notify the court of its error and did not file a request for late filing before this court.

¶ 15 On November 17, 2015, the circuit court held an arraignment on previous petitions to revoke, a review hearing, and a hearing on the August 6, 2015, amended posttrial motion. At the beginning of the hearing, the following dialogue took place:

"THE COURT: [The defendant] has appeared on previous petitions to revoke; is that correct? And we're here on the arraignment of those petitions to revoke and review of [compliance with] the previous order.

MR. SHINKLE [(DEFENSE COUNSEL)]: I also have a motion that is pending that we would like to resolve today.

THE COURT: Is that correct, Mr. Valentine?

MR VALENTINE [(PROSECUTOR)]: No objection, Judge."

After review of the defendant's compliance, the court addressed defense counsel's earlier request to resolve a pending motion. The following dialogue took place:

"THE COURT: I believe that leaves your motion to reconsider, Mr. Shinkle?

MR. SHINKLE [(DEFENSE COUNSEL)]: Your Honor, the motion to reconsider that's been filed, I believe the Court has considered that issue on two prior occasions. I just wanted to make the point with that and be clear that my objection has been with the set up procedure that was used by the police officers ***.

THE COURT: Mr. Valentine?

MR. VALENTINE [(PROSECUTOR)]: Your Honor, I would ask the Court to deny the Defendant's motion. Your Honor already heard all of the evidence, as well as arguments on both sides. [S]o the State would just reassert its arguments at this hearing that it did at the last hearing in this matter and ask that you deny the motion. Thank you.

THE COURT: Okay. On the amended motion to reconsider and for new trial filed August 6, 2015, I think counsel acknowledged that those issues basically have been addressed, and for the reasons previously stated, the amended motion to reconsider and for new trial is denied. Then, that brings you, Mr. Shinkle, to now a 30 day time to file a notice of appeal."

Following the court's denial of the amended motion to reconsider, the court admonished the defendant of her right to an appeal. The court then stated to the defendant that "I think you understand the process as one notice of appeal was filed, but it was premature and stricken, and now you're *** back to where you can file a notice of appeal within 30 days." The defendant filed a new notice of appeal on December 15, 2015.

¶ 16

II. Analysis

¶ 17 On appeal, the defendant asserts that (1) the circuit court erred in denying the December 19, 2014, motion to quash arrest, suppress evidence, and dismiss the charges against her; (2) trial counsel was ineffective for not challenging the basis of the traffic stop; (3) the evidence was insufficient to prove beyond a reasonable doubt that the

defendant possessed cannabis; and (4) the defendant should have received credit toward her fines for time spent in custody prior to sentencing. The State concedes that the evidence was insufficient to prove the defendant possessed cannabis, and that the defendant was entitled to credit for time spent in custody prior to sentencing. The State, however, challenges our jurisdiction to hear this appeal. In support, the State argues that the defendant's notice of appeal was untimely filed and must be dismissed. In response, the defendant argues that because the court erroneously struck her initial notice of appeal, this court should find her new notice of appeal timely.

¶ 18 A resolution of a jurisdictional issue is a question of law, which this court reviews *de novo*. *People v. Marker*, 233 Ill. 2d 158, 162 (2009). "The appellate court's jurisdiction turns on litigants' compliance with our rules, specifically including the timelines established therein." *People v. Lyles*, 217 Ill. 2d 210, 217 (2005). For this court to have jurisdiction, defendant must file a timely notice of appeal. *People v. Lugo*, 391 Ill. App. 3d 995, 997 (2009). The imposition of a sentence is a final judgment in a criminal case. *People v. Salem*, 2016 IL 118693, ¶ 12.

¶ 19 Illinois Supreme Court Rule 606 (eff. Dec. 11, 2014) establishes the procedure and timeline for perfecting an appeal from a criminal conviction. Illinois Supreme Court Rule 606(b) (eff. Dec. 11, 2014) provides that "[e]xcept 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." Section 116-1 of the Code of Criminal Procedure of 1963 establishes the procedure and timeline

for filing a motion for new trial, which requires a written motion for a new trial to be filed within 30 days of the entry of a finding or verdict. 725 ILCS 5/116-1 (West 2014). There is no authority for a circuit court to extend its jurisdiction by reconsidering the denial of a posttrial motion filed beyond the 30-day period. See *People v. Scruggs*, 161 Ill. App. 3d 468, 471 (1987).

¶ 20 We note the following undisputed facts. Following the defendant's conviction and sentencing on June 5, 2015, and July 7, 2015, respectively, the defendant filed a posttrial motion for a new trial on August 5, 2015, and an amended filing one day later on August 6, 2015. On August 28, 2015, following the circuit court's denial of the amended posttrial motion, the court admonished the defendant that she had 30 days to file a notice of appeal. Shortly thereafter, the defendant filed her initial notice of appeal on September 25, 2015. On October 9, 2015, the court erroneously struck the notice of appeal as premature. After receiving the October 9, 2015, order, this court dismissed the defendant's appeal on October 13, 2015. The defendant did not file a responsive pleading to notify the court of the error and request a late filing before this court.

¶ 21 On November 17, 2015, the circuit court held a second hearing on the defendant's August 6, 2015, amended posttrial motion for a new trial. Following the second denial, the defendant was admonished of her appeal rights. Shortly thereafter, the defendant filed a new notice of appeal alleging November 17, 2015, as the court's final judgment regarding this matter.

¶ 22 We agree with the State that the August 6, 2015, amended posttrial motion was denied on the merits on August 28, 2015, which triggered the 30-day requirement to file

an appeal. We do note that the circuit court's order, striking the defendant's initial notice of appeal, was entered in error. However, the defendant was not without a remedy at that time. The defendant could have immediately brought the error to the court's attention and filed a request for late filing with our court under Illinois Supreme Court Rule 606(c) (eff. Dec. 11, 2014), which states:

"(c) Extension of Time in Certain Circumstances: On motion supported by a showing of reasonable excuse for failing to file a notice of appeal on time filed in the reviewing court within 30 days of the expiration of the time for filing the notice of appeal, or on motion supported by a 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, filed in the reviewing court within six months of the expiration of the time for filing the notice of appeal, in either case accompanied by the proposed notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing."

Based on the foregoing, the circuit court lacked jurisdiction to hear the amended posttrial motion on November 17, 2015, and could not extend the time to file an appeal.

¶ 23 With this in mind, we recognize the defendant's loss of her right to appeal was rooted in the circuit court's erroneous belief that a posttrial motion was still pending and thus premature. The result is particularly disturbing in that it prevents review of the pretrial issues the defendant sought to preserve by agreeing to a stipulated bench trial (see *People v. Harris*, 2015 IL App (4th) 140696, ¶ 32 (generally, a stipulated bench trial

provides a defendant with the benefits and convenience of a guilty plea while preserving any pretrial objections)), and from acquiring adequate relief from the obvious errors contained in the record and conceded by the State on appeal. In any case, we lack authority to disregard our lack of jurisdiction. Instead, such jurisdiction may be realized only by a supreme court supervisory order pursuant to Illinois Supreme Court Rule 383 (eff. Mar. 14, 2014). Ill. Const. 1970, art. VI, § 16; see also *Lyles*, 217 Ill. 2d at 220. Accordingly, the defendant's appeal is dismissed for lack of jurisdiction.

¶ 24

III. Conclusion

¶ 25 The defendant's appeal is hereby dismissed for lack of jurisdiction.

¶ 26 Appeal dismissed.