

2019 IL App (1st) 172211-U
No. 1-17-2211
Order filed September 23, 2019

First 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. 15 CR 14590
)	
ARAELL ROSS,)	Honorable
)	Michael B. McHale,
Defendant-Appellee.)	Judge, presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Hyman and Walker concurred in the judgment.

ORDER

¶ 1 *Held:* We dismiss defendant's appeal because we lack jurisdiction to consider the merits of defendant's attack upon his guilty pleas.

¶ 2 Defendant Araell Ross entered guilty pleas to four counts of attempt first degree murder and was sentenced to four concurrent 31-year sentences. He appeals from the trial court's denial of his untimely *pro se* motion to withdraw the pleas and vacate his sentences. Defendant contends that this court should remand the case to the trial court for proper postplea

admonishments because the trial court improperly admonished him as though his guilty pleas were negotiated when in fact they were open pleas. We dismiss.

¶ 3 Defendant was charged with 11 counts of attempt first degree murder, 3 counts of aggravated battery, and 1 count of aggravated discharge of a firearm. On September 19, 2016, following a conference held pursuant to Supreme Court Rule 402 (eff. July 1, 2012), defendant stated that he wished to enter pleas of guilty to four counts of attempt first degree murder. The trial court replied that the “offer” from the court was 31 years in prison. The court then explained the nature of the charges and the potential sentences, the types of trials available to defendant, and the rights that defendant was giving up by entering guilty pleas. Defendant stated that he understood and was entering guilty pleas of his own free will. The court next stated that, during the 402 conference, the State asked for the statutory maximum sentence of 55 years in prison whereas the defense asked for the minimum of 31 years. The court decided, based upon defendant’s age and lack of criminal background, to offer defendant the statutory minimum of 31 years in prison.

¶ 4 The State presented the factual bases for the pleas in that defendant fired a gun at a group of people striking two individuals and then fired again hitting a third person. Defendant was taken into custody shortly thereafter, tested positive for gunshot residue, and was identified by a witness. The court found that there were factual bases for the pleas, accepted the pleas, and found defendant guilty of four counts of attempt first degree murder.

¶ 5 The trial court then admonished defendant that, even though he entered guilty pleas, he still had the right to appeal. However, in order to appeal, defendant “would have to file with the clerk of the court within 30 days of today’s date a written motion to withdraw” the pleas which

stated “all the reasons why you would want to withdraw your plea[s],” and that any issue not raised in the motion would be “waived for appeal purposes.” The court further explained that if the motion was granted, the court would set aside the guilty pleas and sentences, the case would be set for trial, and all the charges that were dismissed would be reinstated and set for trial. The court finally stated that if defendant could not afford an attorney or a transcript of the plea hearing, they could be provided free of charge. The court asked defendant whether he understood and defendant answered yes.

¶ 6 In January 2017, some four months after sentencing, defendant filed a *pro se* motion to withdraw the guilty pleas and vacate the sentences alleging that he had a grade school level education and that his counsel had not “advised” him of the rights he was “surrendering” by pleading guilty; rather, counsel instructed defendant what to say at the plea hearing.

¶ 7 On April 10, 2017, the trial court denied defendant’s *pro se* motion to vacate the pleas as the motion was filed “well past the 30-day limit” and the court did not have “jurisdiction anymore.” The court did not address the merits of the motion. On August 24, 2017, defendant filed a *pro se* motion for leave to file a late notice of appeal in the circuit court. On September 26, 2017, this court granted defendant leave to file a late notice of appeal.

¶ 8 On appeal, defendant contends that this cause should be remanded for proper admonishments pursuant to Supreme Court Rule 605(b) (eff. Oct. 1, 2001), and to allow him to file a new postplea motion pursuant to Supreme Court Rule 604(d) (eff. Mar. 8, 2016), as he entered open guilty pleas but was improperly admonished as though he had entered negotiated guilty pleas (see Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001)). Defendant implicitly acknowledges that his postplea motion was untimely filed more than 30 days following sentencing (see Ill. S. Ct. R.

604(d) (eff. Mar. 8, 2016)), and invokes the “admonition exception” to excuse the untimely nature of his motion.

¶ 9 The State responds that defendant entered negotiated pleas as the State agreed to sentences of 31-years in prison in exchange for his guilty pleas. The State contends, however, that the nature of defendant’s pleas is irrelevant under the circumstances of this case, as this court must dismiss defendant’s appeal for a lack of jurisdiction.

¶ 10 Although defendant argues the merits of his appeal, we must first address the jurisdictional issue. Generally, a trial court loses jurisdiction 30 days following the entry of a final judgment if a timely posttrial motion is not filed. *People v. Bailey*, 2014 IL 115459, ¶ 26.

¶ 11 Pursuant to Supreme Court Rule 606(b) (eff. July 1, 2017), and subject to the requirements of Supreme Court Rule 604(d), a defendant’s “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.” In certain circumstances, Supreme Court Rule 606(c) (eff. July 1, 2017), permits a reviewing court to grant leave to appeal when the appellant files a motion within six months of the expiration of the time for filing the notice of appeal.

¶ 12 The final judgment in a criminal case is the entry of the sentence. *People v. Salem*, 2016 IL 118693, ¶ 12. Here, defendant entered his guilty pleas and was sentenced on September 19, 2016. Therefore, he had 30 days thereafter in which to file either a motion to withdraw his guilty pleas and vacate the sentences or a motion to reconsider the sentences, depending on the nature of his pleas. Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016) (“No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is

imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.”). However, defendant failed to file anything, and the trial court was divested of jurisdiction 30 days later (*Bailey*, 2014 IL 115459, ¶ 26). Defendant did not move to withdraw his guilty pleas and vacate the sentences until January 2017, which was outside the trial court’s 30-day jurisdictional window. See Ill. S. Ct. R. 606(b) (eff. July 1, 2017). Accordingly, the trial correctly concluded that it lacked justification to consider defendant’s motion.

¶ 13 Moreover, as defendant’s motion to withdraw his guilty pleas was untimely, we have no jurisdiction to consider defendant’s appeal from the denial of that motion. See *Salem*, 2016 IL 118693, ¶¶ 14-15, 25. Supreme Court Rule 606(b) requires that an appeal be filed within 30 days of the disposition of a timely postsentencing motion, and this court has no discretion to forgive a defendant’s failure to comply with the timing requirements of the rule. *Salem*, 2016 IL 118693, ¶ 19. Therefore, because defendant failed to file anything within 30 days after the entry of his guilty pleas and sentences, we have no jurisdiction to consider his appeal and must dismiss it.

¶ 14 The admonition exception cited by defendant does not save his appeal as the exception only applies to an appeal from a guilty plea where the defendant timely appeals from his guilty plea without first filing a postplea motion in the circuit court as required by Supreme Court Rule 604(d). See *People v. Hood*, 387 Ill. App. 3d 380, 387 (2008). Pursuant to Supreme Court Rule 604(d), to appeal from a judgment entered upon a guilty plea, a defendant must, within 30 days of the date on which sentence is imposed, file a written postplea motion in the trial court. The

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admonition exception does not apply in this case because defendant did not file an appeal within 30 days of his sentencing on September 19, 2016.¹ *Id.*

¶ 15 Appeal dismissed.

¹ On May 13, 2019, the Office of the State Appellate Defender, defendant's appointed counsel on appeal, filed a motion to dismiss the instant appeal on the basis that the admonition exception does not provide this court with jurisdiction to remand the cause to the circuit court. This court denied the motion without prejudice due to a lack of verification that counsel had discussed the dismissal of the appeal with defendant. Counsel has not refiled the motion.