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2019 IL App (3d) 170550-U

Order filed May 23, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 9th Judicial Circuit, McDonough County, Illinois.
Plaintiff-Appellee,)	
v.)	Appeal No. 3-17-0550 Circuit No. 07-CF-251
DANIEL R. BELKNAP,)	
Defendant-Appellant.)	The Honorable Raymond A. Cavanaugh, Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* In a case in which the defendant's postconviction petition was denied after a third-stage evidentiary hearing, the appellate court found that it did not have appellate jurisdiction to consider the merits of defendant's appeal because defendant's notice of appeal was filed prematurely in the trial court before the final judgment had been entered. The appellate court, therefore, dismissed defendant's appeal.
- ¶ 2 Following a jury retrial, defendant, Daniel R. Belknap, was found guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2006)) and was sentenced to 24 years in prison. On direct appeal, after a reversal by this court, defendant's conviction and sentence were affirmed by the

Illinois Supreme Court (*People v. Belknap*, 2014 IL 117094, ¶¶ 62, 70). Defendant filed a post-conviction petition, alleging claims of actual innocence and ineffective assistance of trial and appellate counsel. Following a third-stage evidentiary hearing, the trial court denied defendant's post-conviction petition. Defendant appealed. The State filed a motion to dismiss the appeal for lack of appellate jurisdiction. We took the motion to be heard with this case. We do not reach the merits of defendant's argument on appeal. Instead, we find that there is no appellate jurisdiction in this case, and we dismiss this appeal for lack of jurisdiction.

¶ 3

FACTS

¶ 4

In December 2007, defendant was charged with first degree murder for the beating death of Silven Yocum, the five-year-old daughter of defendant's girlfriend. Following a jury trial in May 2008, defendant was convicted of the offense and was sentenced to 30 years in prison.¹ Defendant appealed, and this court reversed defendant's conviction and remanded the case for a new trial (*People v. Belknap*, 396 Ill. App. 3d 183, 207, 213 (2009)). On remand, after a second jury trial in August and September 2011, defendant was again convicted of first degree murder and was sentenced to 24 years in prison. Defendant again appealed, and this court again reversed defendant's conviction and remanded the case for a new trial (*People v. Belknap*, 2013 IL App (3d) 110833, ¶ 92)). The State appealed, and the Illinois Supreme Court reversed the judgment of this court and reinstated defendant's conviction and sentence (*Belknap*, 2014 IL 117094, ¶¶ 62, 70)).

¶ 5

In September 2015, defendant filed a postconviction petition in this case, alleging claims of actual innocence and ineffective assistance of trial and appellate counsel. In November 2016, a third-stage evidentiary hearing was held on the postconviction petition. Following the

¹ Defendant was also convicted of endangering the life of a child and sentenced to a concurrent term of 10 years in prison on that offense as well.

presentation of the evidence, the parties were given time to submit written closing arguments to the trial court. On August 16, 2017, the trial court filed a seven-page written opinion discussing the issues raised by defendant at length and ultimately denying defendant's postconviction petition. In concluding the opinion, the trial court stated:

“Based on the foregoing, the post conviction petition of the defendant is denied on both grounds. Atty. Parkinson [the attorney for the State] is directed to prepare an order consistent with this court's ruling.”

¶ 6 Pursuant to the trial court's directive, attorney Parkinson prepared a written order that reflected the trial court's ruling and submitted it to the trial court. The trial court signed the order on August 23, 2017, and the order was filed on August 25, 2017. However, on August 22, 2017, before the final order had been signed or filed, defendant filed his notice of appeal in this case.

¶ 7 In October 2018, while the appeal was pending before this court, the State filed a motion to dismiss the appeal for lack of appellate jurisdiction. In the motion, the State alleged that defendant's notice of appeal was filed in the trial court prematurely and that as a result, this court did not have appellate jurisdiction to hear this case. Defendant filed a response opposing the motion to dismiss, and the State filed a reply to that response. We did not rule upon the State's motion at that time but, instead, took the motion to be heard with this case.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant argues that the trial court erred in denying his postconviction petition after a third-stage evidentiary hearing. Before we reach the merits of that argument, however, we must first determine whether we have appellate jurisdiction to hear this case. The State argues that appellate jurisdiction is lacking because defendant filed his notice of appeal in

the trial court prematurely before the trial court's final order in this case had been signed or filed. Defendant disagrees and argues that appellate jurisdiction exists because the trial court had already issued a lengthy written decision and the order to follow was superfluous. In the alternative, defendant argues that this court should not dismiss this appeal because any failure to follow the proper procedure falls on the trial court, since the trial court should have struck defendant's premature notice of appeal, and would constitute a waste of judicial resources, since defendant will merely file a successive postconviction petition and add a claim of ineffective assistance of postconviction counsel.

¶ 10 The appellate court has a duty to determine if jurisdiction to hear an appeal exists and to dismiss the appeal if jurisdiction is lacking. See *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984). Under the criminal appeal rules, which govern postconviction proceedings (see Ill. S. Ct. R. 651(d) (eff. Jul. 1, 2017); *People v. Lugo*, 391 Ill. App. 3d 995, 997 (2009)), the appellant must file a notice of appeal with the clerk of the circuit court within 30 days after the entry of the final judgment from which the appeal was taken (see Ill. S. Ct. R. 606(b) (eff. Jul. 1, 2017)).

¶ 11 The determination of when the final judgment was entered in this case is governed by Illinois Supreme Court Rule 272 (eff. Nov. 1, 1990), which applies to both civil and criminal appeals (see *People v. Mennenga*, 195 Ill. App. 3d 204, 207 (1990) (recognizing that although Rule 272 is a rule for civil proceedings in the trial court, a rule similar to Rule 272 is applicable in criminal cases)). Rule 272 provides, in pertinent part, as follows:

“If at the time of announcing final judgment the judge requires the submission of a form of written judgment to be signed by the judge or if a circuit court rule requires the prevailing party to submit a draft order, the clerk shall

make a notation to that effect and the judgment becomes final only when the signed judgment is filed.” Ill. S. Ct. R. 272 (eff. Nov. 1, 1990).

As the committee comments to the rule indicate, the purpose of Rule 272 was to remove any doubt as to the date a final judgment was entered. See Ill. S. Ct. R. 272, Committee Comments; *Stoermer v. Edgar*, 104 Ill. 2d 287, 293 (1984); *People v. Dylak*, 258 Ill. App. 3d 141, 143 (1994). If the appellant files a notice of appeal before a final judgment is entered, the notice of appeal is premature and does not confer jurisdiction on the appellate court. See *Stoermer*, 104 Ill. 2d at 293; *In re Marriage of Roberts*, 84 Ill. App. 3d 538, 541 (1980).

¶ 12 The present case falls directly under the provisions of Rule 272. The trial court in this case issued a written decision which directed the attorney for the State to prepare an order reflecting the trial court’s ruling. Defendant filed his notice of appeal before that order was signed or filed. Thus, defendant’s notice of appeal was premature, and this court does not have jurisdiction to hear this appeal. See Ill. S. Ct. R. 606(b) (eff. Jul. 1, 2017); *Stoermer*, 104 Ill. 2d at 293; *People v. Boston*, 27 Ill. App. 3d 246, 248 (1975); *People v. Maynard*, 393 Ill. App. 3d 605, 607-08 (2009) (reaching a similar result pursuant to Supreme Court Rule 271); *Dylak*, 258 Ill. App. 3d at 143-44 (same). Contrary to the defendant’s implied suggestion, this court has no ability relax the jurisdictional requirements. See *Roberts*, 84 Ill. App. 3d at 542 (stating the appellate court’s belief that Rule 272 must be strictly applied). This appeal must be dismissed, therefore, for lack of appellate jurisdiction.

¶ 13 CONCLUSION

¶ 14 For the foregoing reasons, we dismiss defendant’s appeal for lack of appellate jurisdiction.

¶ 15 Appeal dismissed.