

NOTICE  
Decision filed 08/29/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 190165-U

NO. 5-19-0165

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).

---

<i>In re</i> DOUGLAS O. JR., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 09-JD-343
	)	
Douglas O. Jr.,	)	Honorable
	)	Alana I. Mejias,
Respondent-Appellant).	)	Judge, presiding.

---

JUSTICE CATES delivered the judgment of the court.  
Justices Barberis and Boie concurred in the judgment.

**ORDER**

¶ 1 *Held*: Trial court properly dismissed respondent’s petition to set aside his adjudication of delinquency given that it was untimely filed.

¶ 2 Douglas O. Jr., respondent-appellant, sought to set aside his juvenile court adjudication on the grounds of ineffective assistance of counsel and denial of his constitutional rights. The State filed a motion to dismiss the petition arguing that the request to set aside the adjudication of delinquency was untimely and the request for a declaratory judgment sought civil relief was not available in a juvenile delinquency case. After a hearing, the circuit court of St. Clair County granted the State’s motion to dismiss

the petition to set aside the adjudication of delinquency given that all of the allegations and claims for relief were time-barred. The court further ruled that respondent received proper representation at the time of his plea. We affirm.

¶ 3 In October 2009, the State filed a petition for wardship of Douglas O. Jr. (hereinafter respondent), then age 14. Respondent was charged with two Class X felony counts of aggravated criminal sexual assault (720 ILCS 5/12-14(b)(i) (West 2008)) and two Class 2 felony counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(2)(i) (West 2008)). Respondent reportedly, at age 13, committed acts of sexual conduct with and acts of sexual penetration of two minors who were both under 9 years old when the acts occurred.

¶ 4 In September 2010, respondent pled guilty to two counts of aggravated criminal sexual abuse in exchange for the dismissal of the two counts of aggravated criminal sexual assault. Respondent was found delinquent, made a ward of the court, sentenced to five years' probation, and ordered to register as a sex offender under section 3 of the Sex Offender Registration Act (730 ILCS 150/3 (West 2010)). Respondent subsequently completed his five-year probation term and was successfully discharged from probation in September 2015. Respondent was 20 years old at this point.

¶ 5 In September 2017, respondent asked the court to lift its 2010 order requiring him to register as a sex offender. Under section 3-5(c) of the Sex Offender Registration Act, a minor adjudicated delinquent for an offense which would be a felony if charged as an adult may petition for termination of the registration term if at least five years has passed since the requirement was imposed. 730 ILCS 150/3-5(c) (West 2016). In a report filed

October 2018, clinical psychologist Dr. Cuneo, who had evaluated respondent, concluded that respondent would not pose a risk if he were no longer required to register as a sex offender. The court subsequently found by a preponderance of the evidence that respondent posed no risk to the community and would no longer be required to register as a juvenile sex offender. See 730 ILCS 150/3-5(d) (West 2016).

¶ 6 In October 2017, respondent sought to have his 2010 adjudication of delinquency set aside and further sought a declaratory judgment to set aside the adjudication. Respondent believed that when he pled guilty, his mother had a conflict of interest because the victims were her other children from a different marriage. He argued his plea proceedings were fatally flawed because he relied on the advice of his mother or on the attorney she retained for him. Respondent believes that because his mother had a conflict of interest, his 2010 plea counsel necessarily had a conflict of interest or was ineffective. The State moved to dismiss respondent's petition arguing that respondent's request to set aside his 2010 adjudication of delinquency was untimely and his request for declaratory judgment sought civil relief not available in a juvenile delinquency matter.

¶ 7 The court conducted a hearing on the State's motion to dismiss. The State argued that respondent's petition was untimely. Respondent agreed that the petition was filed more than 30 days after the adjudication of delinquency, but argued that his petition presented a constitutional issue based on the adequacy of his representation at the 2010 plea hearing. Respondent further asserted that constitutional issues may be raised at any time. The State agreed that a constitutional issue can be raised at any time while a court has jurisdiction, but here the court lost jurisdiction when respondent did not file a timely

challenge to his 2010 plea pursuant to Illinois Supreme Court Rules. The court determined that respondent had received proper representation at the time of his plea and all of respondent's allegations and claims for relief were time-barred. The court therefore granted the State's motion to dismiss respondent's petition to set aside his 2010 adjudication of delinquency. Respondent then filed a motion to reconsider arguing that his claims had not been preserved because of the conflicts of interest of his mother and plea counsel, thereby making dismissal unjust. The court denied respondent's motion to reconsider. Respondent now argues on appeal that the court erred and abused its discretion in granting the State's motion to dismiss because an actual controversy existed and a judgment declaring the rights of the parties was necessary. Respondent also contends that he had a right to a hearing in light of the fact that his case was based on a constitutional issue.

¶ 8 An appeal from a final judgment in a delinquent minor case is governed by the rules applicable to criminal cases. Ill. S. Ct. R. 660(a) (eff. Oct. 1, 2001). "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." Ill. S. Ct. R. 604(d) (eff. July 1, 2017). Accordingly, where more than 30 days have elapsed since sentencing and the trial court has not extended the limitation period upon proper application of the defendant, the trial court is divested of jurisdiction to entertain a defendant's motion directed against the judgment. *People ex rel. Alvarez v. Skryd*, 241

Ill. 2d 34, 39-41 (2011). In juvenile delinquency cases, the sentencing disposition is subject to modification until final closing and discharge, but challenges to the delinquency finding must be asserted within 30 days, pursuant to Rule 604(d). *People ex rel. Devine v. Stralka*, 226 Ill. 2d 445, 456 (2007).

¶ 9 Here, respondent was adjudicated delinquent in 2010 and filed his first challenge to that ruling in 2017. Additionally, respondent's late filing did not seek to withdraw his guilty plea as required by Rule 604(d), but instead asked the court to set aside his adjudication of delinquency altogether. Under the circumstances, the trial court correctly found that it lacked jurisdiction and properly dismissed respondent's petition.

¶ 10 Respondent, relying on *In re B.K.*, 358 Ill. App. 3d 1166 (2005), counters that questions of constitutionality can be raised at any time, even after the expiration of any time period. Respondent contends that as a juvenile, he should not be held responsible for preserving claims within the 30-day period mandated by supreme court rules. Again, rules governing criminal appeals apply in juvenile delinquency cases, including deadlines for filing postjudgment motions and notices of appeal. When a juvenile does not comply with those deadlines, the court lacks jurisdiction to consider untimely-filed claims, even constitutional ones. See *In re J.T.*, 221 Ill. 2d 338, 346-48 (2006); *In re Henry P.*, 2014 IL App (1st) 130241, ¶¶ 48-49. The principle that a reviewing court may overlook forfeiture and consider unpreserved constitutional claims is limited to cases in which the court has jurisdiction. *Skryd*, 241 Ill. 2d at 36, 41-43 (court has no authority to consider a motion to vacate a plea 12 years after entered even though not properly advised of 604(d) rights). Moreover, the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West

2016)) does not apply to proceedings under the Juvenile Court Act of 1987 (705 ILCS 405/1-2 *et seq.* (West 2016)). See *In re Vincent K.*, 2013 IL App (1st) 112915, ¶¶ 45-50.

¶ 11 We further note that respondent is now an adult, unburdened by any criminal conviction, and no longer needs to register as a sex offender. Respondent has not shown that the trial court, or this court for that matter, has the authority to consider awarding respondent any additional relief, even relief based on allegedly newly discovered constitutional claims. Given the untimeliness of respondent's petition, the trial court properly dismissed respondent's petition for lack of jurisdiction.

¶ 12 For the foregoing reasons, we affirm the trial court's dismissal of respondent's petition.

¶ 13 Affirmed.