

**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).

NO. 4-09-0711

Order Filed 3/8/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
KENNETH A. GRAY, JR.,	)	No. 05CF554
Defendant-Appellant.	)	
	)	Honorable
	)	Craig H. DeArmond,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court. Justices Turner and Appleton concurred in the judgment.

**ORDER**

*Held:* As no timely postjudgment motions were pending before the trial court when the defendant filed his notice of appeal, the defendant's motion for summary remand for consideration of an untimely motion for continuance was denied.

This appeal comes to us on the motion of defendant's counsel, the office of the State Appellate Defender (OSAD), for remand for consideration of defendant's motion for additional time to respond to the State's motion to dismiss defendant's petition for relief from judgment. OSAD claims that we lack jurisdiction because the trial court has not entered an order disposing of defendant's motion for additional time to respond. The State declined to file a response to OSAD's motion. We disagree with OSAD and deny the motion.

I. BACKGROUND

On March 15, 2007, defendant, Kenneth A. Gray, Jr., was convicted of first degree murder and sentenced to 56 years in prison. In April 2008, this court affirmed defendant's conviction and sentence (*People v. Gray*, No. 4-07-0233 (April 1, 2008) (unpublished order under Supreme Court Rule 23)).

On March 13, 2009, defendant filed a petition for postjudgment relief under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)). On July 27, 2009, the State moved to dismiss defendant's petition, arguing that defendant failed to show "the existence of a meritorious claim." On August 25, 2009, the trial court granted the State's motion and dismissed defendant's section 2-1401 petition. On September 3, 2009, defendant placed in the institutional mail a "MOTION FOR ADDITIONAL TIME TO RESPOND," requesting 30 additional days to respond to the State's motion to dismiss.

On September 17, 2009, defendant filed his notice of appeal from the trial court's dismissal of his section 2-1401 petition. On September 28, 2009, defendant filed a response to the State's motion to dismiss.

## II. ANALYSIS

OSAD asserts this case must be remanded for the trial court to rule on defendant's motion for additional time to respond to the State's motion to dismiss. Because defendant's motion was untimely, we disagree.

Proceedings on section 2-1401 petitions are governed by "the usual rules of civil practice." *People v. Vincent*, 226 Ill. 2d 1, 8, 871 N.E.2d 17, 23 (2007). In order for a notice of appeal to confer jurisdiction on this court, the provisions of the supreme court rules governing appellate jurisdiction must be satisfied. *Dillman & Associates, Inc. v. Capitol Leasing Co.*, 110 Ill. App. 3d 335, 339, 442 N.E.2d 311, 315 (1982). Supreme Court Rule 303 sets forth general jurisdictional prerequisites for civil appeals. Rule 303(a)(2) states, in part,

"When a timely postjudgment motion has been filed by any party, \*\*\* a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion \*\*\* becomes effective when the order disposing of said motion \*\*\* is entered." Ill. S. Ct. R. 303(a)(2) (eff. May 30, 2008).

In this case, the trial court entered a judgment dismissing defendant's section 2-1401 petition on August 25, 2009. Defendant's September 3, 2009, motion for additional time to respond to the State's motion to dismiss was, in essence, a motion for a continuance. As such, it was untimely since it was filed after judgment had been entered. 735 ILCS 5/2-1007 (West 2008) ("On good cause shown, in the discretion of the court and on just terms, additional time may be granted for the doing of

any act \*\*\* *prior to judgment*" (emphasis added)). Because defendant's motion was untimely and he has no other motions pending before the court, Rule 303(a)(2) does not delay this court's taking jurisdiction over his appeal. Accordingly, remandment for the court to consider defendant's untimely motion is inappropriate and unnecessary.

### III. CONCLUSION

For the reasons stated, we deny OSAD's motion for summary remand.

Denied.