

2019 IL App (1st) 172630-U

No. 1-17-2630

Order filed August 8, 2019

Fourth 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-Appellee,)	Cook County.
)	
v.)	No. 14 CR 13369
)	
JAMAL WARREN,)	Honorable
)	Vincent M. Gaughan,
Defendant-Appellant.)	Judge, presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice McBride and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's appeal is dismissed where we lack jurisdiction to consider his untimely motion to withdraw his guilty plea.

¶ 2 Pursuant to a fully negotiated guilty plea, defendant Jamal Warren pled guilty to one count of attempted first degree murder and was sentenced to 25 years' imprisonment. More than 2½ years later, defendant filed a *pro se* petition to withdraw his guilty plea and vacate sentence, which the trial court dismissed. On appeal, defendant contends that the trial court's postplea

admonishments under Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001) were defective, and therefore, we should remand for him to receive proper admonishments and the opportunity to file a new postplea motion. We dismiss.

¶ 3 Defendant was charged in a 13-count information with attempted first degree murder, aggravated battery, and aggravated discharge of a firearm arising from an incident on June 17, 2014. Relevant here, count I for attempted first degree murder alleged that defendant “shot James Murphy on or about his body while armed with a firearm” (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2014)).¹

¶ 4 On January 28, 2015, the parties and the trial court held an off-record conference pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 2012). Afterwards, the court asked defendant on the record whether he accepted “the negotiated settlement.” Defendant answered affirmatively. The State then amended count I of the information to strike the allegation that defendant shot Murphy and instead allege that defendant “inflicted great bodily harm,” and nolo-prossed the remaining counts.

¶ 5 The court admonished defendant regarding the nature of the charge against him, the sentencing range, and the rights he would waive by pleading guilty. Defendant stated that he understood and waived his right to a trial. The court acknowledged that, during the Rule 402 conference, the State “put forth a factual basis” that was “sufficient” to support a guilty plea to the amended count for attempted first degree murder. The court then accepted defendant’s guilty plea and entered judgment thereon. Defendant waived his right to a presentence report, and the court sentenced him to 25 years’ imprisonment.

¹ Throughout this order, capitalization is omitted from quoted material.

¶ 6 The court thereafter admonished defendant as follows:

“THE COURT: If you see fit, you have a right to appeal this guilty plea. And what you’d first have to do within 30 days is file a written document called a motion to vacate your plea of guilty.

In that written document, you have to have all your complaints of violation of your constitutional or statutory rights; otherwise, they’re waived or given up. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: If you needed the assistance of a lawyer to help you prepare that document but you couldn’t afford one, I would pay for all the costs of that attorney. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: If I agreed with you that your rights were violated, I’d vacate your plea of guilty to the amended Count I, reinstate the original Count I, and reinstate all the other charges that the State had dropped and set all those counts down for trial.

If I disagreed that your rights were violated, I’d determine whether you could afford an appeal or not. If you could not afford an appeal, I would pay for all the costs of your appeal, including the cost of transcripts, filing fees, attorney fees, everything. Do you understand that, [defendant]?

THE DEFENDANT: Yes, sir.”

¶ 7 On August 29, 2017, more than 2½ years after defendant’s guilty plea, he filed a *pro se* “petition to withdraw guilty plea and vacate sentence.” Defendant alleged ineffective assistance

of counsel in that his attorney ignored his requests to show him documents obtained in discovery, and had he seen the documents, he would not have pled guilty. Further, defendant claimed that his attorney had refused to file a petition to withdraw his guilty plea and a notice of appeal. Therefore, defendant requested a hearing to raise his claim of ineffective assistance pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984).

¶ 8 At a hearing on defendant's petition, the trial court noted that he pled guilty in January 2015 and the "two-year window of opportunity" under "Section 114-02" had expired.² The court stated that defendant's allegations "would be pertinent for a postconviction petition," and dismissed the case.

¶ 9 On appeal, defendant concedes his request to withdraw his guilty plea and vacate judgment was untimely, but contends the trial court's postplea admonishments did not comply with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001). Therefore, defendant argues that we should remand for him to receive proper admonishments and the opportunity to file a new postplea motion. In response, the State argues that defendant's request to withdraw his guilty plea and vacate sentence was untimely, and the trial court's admonishments substantially complied with Rule 605(c).

¶ 10 Although neither party raises the issue of appellate jurisdiction, we have an independent duty to ascertain our jurisdiction prior to considering the merits of an appeal (*People v. Lewis*, 234 Ill. 2d 32, 36-37 (2009)), and to dismiss an appeal if jurisdiction is lacking (*People v. Garcia*, 2015 IL App (1st) 131180, ¶ 65).

² Presumably, the trial court was referring to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)), which provides that a petition for vacating a final judgment older than 30 days generally must be filed no later than two years after the entry of judgment.

¶ 11 Pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2017), a defendant who wishes to appeal from a negotiated guilty plea must first file, within 30 days of sentencing, a written postplea motion with the trial court. Where more than 30 days have elapsed after sentencing, and a motion to extend the limitation period has not been granted, the trial court is divested of jurisdiction to hear a defendant's motion to withdraw his guilty plea. *People ex. rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40-41 (2011). In that case, even when a defendant alleges that he was not substantially advised regarding how to appeal from a negotiated guilty plea pursuant to Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001), "the appellate court lack[s] jurisdiction to consider the admonishment issue" (*In re J.T.*, 221 Ill. 2d 338, 346 (2006)).

¶ 12 Here, defendant entered a negotiated guilty plea to attempted first degree murder and was sentenced on January 28, 2015. He did not file a timely postplea motion in the circuit court or a notice of appeal. On August 29, 2017, more than 2½ years after sentencing, defendant filed his *pro se* petition to withdraw his plea and vacate his sentence. The trial court correctly dismissed the petition because it was filed more than 30 days after sentencing and therefore, its jurisdiction had lapsed. *Skryd*, 241 Ill. 2d at 40-41. Under these circumstances, this court also lacks jurisdiction to consider the merits of defendant's claim. *Id.* Because we lack jurisdiction, we must dismiss defendant's appeal. *In re J.T.*, 221 Ill. 2d at 346.

¶ 13 Dismissed.