



SUPREME COURT OF ILLINOIS

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January 25, 2023

In re: People State of Illinois, respondent, v. TyJuan Keith, petitioner.
Leave to appeal, Appellate Court, First District.
129162

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 03/01/2023.

Rochford, J., took no part.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

56-eg.1

No. 1-20-1017
Order filed July 28, 2022

Fourth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the
Plaintiff-Appellee,) Circuit Court of
v.) Cook County.
TYJUAN KEITH,)) No. 99 CR 792
Defendant-Appellant.)) Honorable
)) Alfredo Maldonado,
)) Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Rochford and Martin concurred in the judgment.

SUMMARY ORDER

¶ 1 Defendant TyJuan Keith appeals from an order of the circuit court granting the State's combined motion to dismiss his *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2004), *pro se* "habeas corpus 2255 petition" brought "pursuant to 724 ILCS 5/114(a)(6) and (a)(8)," and miscellaneous *pro se* filings.¹

¹ Defendant's name is spelled differently throughout the record. For consistency, we use the spelling in our previous decisions.

¶ 2 On November 7, 2002, defendant pled guilty to first degree murder in exchange for a 26-year sentence. On appeal from his motion to withdraw his plea and vacate his sentence, we remanded for compliance with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001). *People v. Keith*, No. 1-04-1296 (2006) (unpublished order under Illinois Supreme Court Rule 23).

¶ 3 On remand, defendant filed another motion to withdraw his plea, alleging his guilty plea was coerced and not voluntarily made because (1) gang members threatened his family prior to the plea, and (2) defense counsel gave him inaccurate information that he would serve only 50% of his sentence and a co-defendant would testify against him if he proceeded to trial.

¶ 4 Following a hearing, the circuit court denied defendant's motion. We vacated defendant's sentence on appeal, finding the circuit court failed to strictly comply with section 5-3-1 of the Unified Code of Corrections (730 ILCS 5/5-3-1 (West 2004)), and remanded for a new sentencing hearing. *People v. Keith*, No. 1-07-1479 (2009) (unpublished order under Illinois Supreme Court Rule 23). On remand, the circuit court sentenced defendant to 26 years' imprisonment. We affirmed his sentence and corrected his mittimus. *People v. Keith*, No. 1-10-1808 (2011) (unpublished summary order under Illinois Supreme Court Rule 23).

¶ 5 In 2005, while the appeal from his motion to withdraw his plea and vacate his sentence (appeal number 1-04-1296) was pending, defendant filed the instant *pro se* postconviction petition. In his petition, defendant again alleged that his guilty plea was unknowing because it was made in reliance on defense counsel's incorrect advice that (1) he would only have to serve 50% of his sentence, and (2) his co-defendant would testify against him at trial. He further alleged his plea was coerced because a gang member threatened to hurt his family if he did not plead guilty. Finally, he argued the trial court erred by denying his pre-plea motion to suppress evidence.

¶ 6 Defendant was appointed postconviction counsel, who filed a supplemental petition on September 30, 2009, alleging, in relevant part, that defense counsel provided “unreasonable assistance” by failing to file a motion to reconsider the denial of defendant’s motion to suppress evidence and raise the issue again on remand. The circuit court granted the State’s 2010 motion to dismiss. On appeal, this court found defendant was denied reasonable assistance of postconviction counsel for failing to frame his plea claims as allegations of ineffective assistance of appellate counsel to avoid forfeiture and remanded for further second-stage proceedings. *People v. Keith*, 2013 IL App (1st) 110016-U, ¶ 28. However, we added,

“[O]ur decision should not be construed as any indication as to whether defendant’s claim of ineffective assistance of appellate counsel has merit. Moreover, if newly appointed counsel, after complying with the duties of Rule 651(c), determines that defendant’s petition lacks any meritorious issues, then counsel may move to withdraw as counsel.” *Id.*

¶ 34.

¶ 7 On remand, new postconviction counsel was appointed. In 2019, the circuit court permitted new postconviction counsel to withdraw.² But before counsel was allowed to withdraw, the State filed an amended motion to dismiss, which incorporated its original motion to dismiss from 2010, and argued defendant’s claims had been resolved previously by the circuit court after the hearing on his motion to withdraw his plea and were therefore procedurally barred. In response, defendant,

² Relying on *People v. Greer*, 212 Ill. 2d 192 (2004), new postconviction counsel filed a motion to withdraw, stating she reviewed the record, determined no meritorious issues could be raised on defendant’s behalf, and therefore had an ethical obligation to withdraw. Counsel argued defendant’s petition merely reiterated the claims raised in his motion to withdraw his plea, which had been heard and decided by the circuit court following a hearing. Further, postconviction counsel argued the claim regarding the denial of defendant’s motion to suppress evidence was without merit because the circuit court properly denied the motion. Finally, counsel argued, “Regarding the issue of ineffective assistance of appellate counsel, there is no indication that there were any issues to be raised after review of the transcripts.”

pro se, argued the State's motion to dismiss was untimely, and he had asked for appointment of counsel, but counsel was not appointed.

¶ 8 In March 2019, while the postconviction matter was pending, defendant filed the instant *pro se* "Post-Conviction Habeas Corps 2255" petition "pursuant to 724 ILCS 5/114(a)(6) and (a)(8)," arguing he was unlawfully arrested without a warrant and illegally detained. He also asserted ineffective assistance of counsel and that his "false charging instrument" was insufficient. Defendant asked the court to dismiss his indictment, release him from custody, and award him "ten trillion dollars a day for [his] illegal incarceration." He additionally filed *pro se* motions to withdraw his plea in September 2017, vacate his plea in February 2019, quash arrest and suppress evidence in March 2018, and a motion for writ of *habeas corpus* in March 2019.

¶ 9 The State filed a "combined motion to dismiss" the *pro se habeas* petition and motions, incorporating its original 2010 motion to dismiss and arguing defendant's filings were variously legally insufficient, untimely, and barred.

¶ 10 On August 4, 2020, the circuit court granted the State's motions to dismiss defendant's petitions and *pro se* filings.

¶ 11 On September 1, 2020, defendant mailed a notice of appeal from the circuit court's "August 3, 2020," judgment. The notice was file stamped by the clerk of the circuit court on September 14, 2020.

¶ 12 Also on September 1, 2020, defendant mailed a "motion for reconsideration of *pro se* filings," which was file stamped September 11, 2020. Following a hearing on the motion to reconsider, the court denied the motion on September 25, 2020. The court admonished defendant he had 30 days to file a Notice of Appeal, to which defendant responded, "Okay." No additional

notice of appeal was filed, but the record reflects the file-stamped September 14, 2020, notice of appeal was transmitted to this court and received on September 24, 2020.

¶ 13 The Office of the State Appellate Defender, which represents defendant on appeal, has filed a motion for leave to withdraw as appellate counsel, citing *Pennsylvania v. Finley*, 481 U.S. 551 (1987). Counsel has submitted a memorandum in support of the motion, stating a review of the record revealed an appeal would be without arguable merit. Copies of the motion and memorandum were sent to defendant, who was advised that he may submit any points in support of his appeal. He has submitted two responses.

¶ 14 In his first response, defendant “object[s]” to counsel’s motion to withdraw.

¶ 15 In his second response, defendant details the progression of his case prior to trial and asserted any delays with his case were attributable to the State. Defendant further argues a claim of ineffective assistance, his sentence is unconstitutional, he is being held illegally, and again reiterates his objection to appointed counsel’s motion to withdraw.

¶ 16 As an initial matter, a careful review of the record reveals that we are without jurisdiction to consider the portion of defendant’s appeal relating to his postconviction petition and criminal *pro se* filings (motions to withdraw his plea, to vacate his plea, and to quash arrest and suppress evidence).³ We have “an independent duty to consider issues of jurisdiction, regardless of whether either party has raised them.” *People v. Smith*, 228 Ill. 2d 95, 104 (2008). The filing of a notice of appeal “is the jurisdictional step which initiates appellate review.” (Internal quotation marks omitted.) *Id.* Absent a timely filed notice of appeal, this court lacks jurisdiction to consider issues

³ Defendant’s *habeas* petition and motion for writ of *habeas corpus* are civil in nature. See *Hennings v. Chandler*, 229 Ill. 2d 18, 20 (2008) (an action brought for *habeas corpus* relief is a civil proceeding).

relating to any part of the ruling (*People v. Love*, 2013 IL App (2d) 120600, ¶ 32), and we must dismiss the appeal (*Smith*, 228 Ill. 2d at 104).

¶ 17 Illinois Supreme Court Rule 606 (eff. July 1, 2017) sets forth the procedure for appeals in criminal cases. Although proceedings under the Act are civil in nature, Illinois Supreme Court Rule 651(d) (eff. July 1, 2017) provides that appeals under the Act are subject to the supreme court rules governing criminal appeals. A defendant has 30 days to file a postjudgment motion following entry of the final judgment. See *People v. Flowers*, 208 Ill. 2d 291, 303 (2003) (a trial court loses jurisdiction to vacate or modify its judgment 30 days after entry of judgment unless a timely postjudgment motion is filed). Rule 606(b) (eff. July 1, 2017) provides that to appeal a final judgment in a criminal proceeding, the defendant must file a notice of appeal 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. However,

“When a timely posttrial or postsentencing motion directed against the judgment has been filed by *** defendant, if not represented by counsel, *any notice of appeal filed before the entry of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court.* *** A new notice of appeal must be filed within 30 days following the entry of the order disposing of all timely postjudgment motions.” (Emphasis added.) Ill. S. Ct. R. 606(b) (eff. July 1, 2017).

¶ 18 Illinois Supreme Court Rule 373 (eff. July 1, 2017), which is applicable in criminal cases under Illinois Supreme Court Rule 612(b)(18) (eff. July 1, 2017), provides:

“Unless received after the due date, the time of filing records, briefs or other documents required to be filed within a specified time will be the date on which they are

actually received by the clerk of the reviewing court. If received after the due date, the time of mailing by an incarcerated, self-represented litigant shall be deemed the time of filing.

Proof of mailing shall be as provided in Rule 12. This rule also applies to *** the notice of appeal filed in the trial court.” Ill. S. Ct. R. 373 (eff. July 1, 2017).

¶ 19 Here, the circuit court dismissed defendant’s *pro se* postconviction petition and criminal *pro se* filings on August 4, 2020. Defendant had 30 days from that date in which to file a postjudgment motion or his notice of appeal. The file stamps show he filed his motion to reconsider on September 11, 2020, and his notice of appeal on September 14, 2020, more than 30 days after the court’s judgment.⁴ However, because defendant is incarcerated and self-represented and both dates are outside the 30-day jurisdictional window permitted by Rule 606, the time of filing is deemed September 1, 2020, the date defendant placed both the motion and the notice of appeal in the mail, rendering both timely filed. Ill. S. Ct. R. 373 (eff. July 1, 2017).

¶ 20 Although defendant’s notice of appeal was deemed filed within 30 days of the August 4, 2020, order, it was filed before the circuit court ruled on his motion to reconsider on September 25, 2020. As to defendant’s postconviction petition and criminal *pro se* filings, this resulted in his notice of appeal “hav[ing] no effect” (Ill. S. Ct. R. 606(b) (eff. July 1, 2017)). When the circuit court later denied his motion to reconsider, the court informed defendant he needed to file a notice of appeal within 30 days, but the record before us does not reflect that a new notice of appeal was filed within 30 days from the September 25, 2020, ruling. Thus, there is no timely filed notice of

⁴ Defendant’s notice of appeal lists the date of judgment as August 3, 2020, while the circuit court’s ruling was on August 4, 2020. Under “nature of order appealed from,” his notice of appeal states, “My Pro se filings of Petition’s and Motion’s They were timely and relevant.” Although the date of judgment is one day off, we find the nature of the order sufficiently describes the circuit court’s August 4, 2020, judgment given the court’s order disposed of defendant’s postconviction petition and other “*pro se* filings” at the same time. See *Smith*, 228 Ill. 2d. at 104-05 (notices of appeal are to be construed liberally, and their purpose is to inform the prevailing party that the other party seeks review of the judgment).

appeal, which is necessary to initiate appellate review of the portion of the circuit court's order dismissing defendant's postconviction petition and criminal filings. See *Smith*, 228 Ill. 2d at 104. Without a timely filed notice of appeal, we are without jurisdiction to consider issues relating to that part of the ruling (*Love*, 2013 IL App (2d) 120600, ¶ 32), and we must dismiss the appeal to the extent it seeks review of the dismissal of defendant's postconviction petition and criminal filings (the motions to withdraw plea, to vacate plea, and to quash arrest and suppress evidence) (*Smith*, 228 Ill. 2d at 104).

¶ 21 We now turn to the portion of the circuit court's order denying him *habeas corpus* relief. An action brought for *habeas corpus* relief is a civil proceeding. See *Hennings v. Chandler*, 229 Ill. 2d 18, 20 (2008) ("Contained within the Code of Civil Procedure *** is article X, which codifies the laws of this state governing complaints for *habeas corpus* relief." (Internal citations omitted.)). Accordingly, Illinois Supreme Court Rule 303 (eff. July 1, 2017) applies to that portion of defendant's appeal challenging the dismissal of his *habeas* petition and motion.

¶ 22 Under Rule 303(a)(2), in civil cases, a notice of appeal filed before entry of the order disposing of the last pending postjudgment motion becomes effective when the order disposing of such motion is entered. Ill. S. Ct. R. 303(a)(2) (eff July 1, 2017). Therefore, we have jurisdiction to consider defendant's appeal as to his requests for *habeas corpus* relief because his notice of appeal mailed on September 1, 2020, became effective on September 25, 2020, when the circuit court disposed of his postjudgment motion. After carefully reviewing the record in light of counsel's memorandum and defendant's responses, we agree with counsel's conclusion that there are no issues of arguable merit to raise on appeal with respect to his *habeas corpus* claims.

¶ 23 Thus, we dismiss the appeal with respect to the circuit court's dismissal of defendant's postconviction petition and criminal *pro se* filings (the motions to vacate the guilty plea, to

withdraw the guilty plea, and to quash arrest and suppress evidence), affirm with respect to the dismissal of his *habeas corpus* petition and motion, and allow the motion of the State Appellate Defender for leave to withdraw as counsel.

¶ 24 The order is entered in accordance with Supreme Court Rule 23(c)(1), (2), and (4) (eff. Jan. 1, 2021).

¶ 25 Affirmed in part and dismissed in part.

**Additional material
from this filing is
available in the
Clerk's Office.**