



## SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING  
200 East Capitol Avenue  
SPRINGFIELD, ILLINOIS 62701-1721  
(217) 782-2035

Jacob M. Currey  
Reg. No. Y48089  
Stateville Correctional Center NRC  
P O Box 112  
Joliet IL 60434-0112

FIRST DISTRICT OFFICE  
160 North LaSalle Street, 20th Floor  
Chicago, IL 60601-3103  
(312) 793-1332  
TDD: (312) 793-6185

May 24, 2023

in re: People State of Illinois, respondent, v. Jacob M. Currey, petitioner.  
Leave to appeal, Appellate Court, Second District.  
129386

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 06/28/2023.

Very truly yours,

*Cynthia A. Grant*

Clerk of the Supreme Court

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# SUPREME COURT OF ILLINOIS

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CYNTHIA A. GRANT  
Clerk of the Court

(217) 782-2035  
TDD: (217) 524-8132

August 01, 2023

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160 North LaSalle Street, 20th Floor  
Chicago, IL 60601-3103  
(312) 793-1332  
TDD: (312) 793-6185

Jacob M. Currey  
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In re: People v. Currey  
129386

Today the following order was entered in the captioned case:

Motion by Petitioner, *pro se*, for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Denied.

Order entered by the Court.

This Court's mandate shall issue forthwith to the Appellate Court, Second District.

Very truly yours,

*Cynthia A. Grant*

Clerk of the Supreme Court

cc: Appellate Court, Second District  
Attorney General of Illinois - Criminal Division  
State's Attorney Kendall County  
State's Attorney's Appellate Prosecutor, Second District

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No. 2-21-0731  
Summary Order filed November 21, 2022

**NOTICE:** This order was filed under Supreme Court Rule 23(c)(2) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE  
OF ILLINOIS,

Plaintiff-Appellee,

v.

JACOB M. CURREY,

Defendant-Appellant.

) Appeal from the Circuit Court  
) of Kendall County.  
)

) Nos. 17-CF-216  
) 17-CM-240  
) 17-CM-401  
) 17-CM-665  
) 17-TR-3505  
) 18-CF-65  
) 18-CF-67  
)

) Honorable  
) Robert P. Pilmer,  
) Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Presiding Justice Brennan and Justice McLaren concurred in the judgment.

**SUMMARY ORDER**

¶ 1 On August 16, 2021, defendant, Jacob M. Currey, entered negotiated guilty pleas in seven cases: six criminal and one traffic. The trial court admonished defendant of the pleas' consequences, and defendant indicated that he understood. The court found the State's factual bases for the pleas was sufficient. The court then accepted the pleas as knowing and voluntary and imposed the agreed aggregate sentence of 13 years in prison. The court admonished defendant per

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Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001) that if he wished to appeal, he needed to file within 30 days a motion to withdraw his guilty pleas and vacate the judgments.

¶ 2 Subsequently, defendant filed a motion to withdraw his pleas in all seven cases. The circuit court clerk filed-stamped the motion on October 20, 2021. Thereafter, the State filed a motion to dismiss, reasoning that the trial court lost jurisdiction over the cases 30 days after defendant entered the pleas on August 16, 2021. At the hearing on the motion, the court agreed with the State that the motion was untimely and dismissed it. After the court so ruled, the State noted that the court had imposed incorrect terms of mandatory supervised release (MSR) in two of the cases. The court agreed and issued amended sentencing orders in the two cases.

¶ 3 Defendant timely appealed from the dismissal of his motion to withdraw his pleas. The trial court appointed the Office of the State Appellate Defender.

¶ 4 Per *Anders v. California*, 386 U.S. 738 (1967), and *People v. Jones*, 38 Ill. 2d 384 (1967), the appellate defender moves to withdraw as counsel. In her motion, counsel states that she read the record and found no issue of arguable merit. Counsel further states that she advised defendant of her opinion. Counsel supports her motion with a memorandum of law providing a statement of facts and an argument why this appeal presents no issue of arguable merit. We advised defendant that he had 30 days to respond to the motion. Defendant has filed two responses.

¶ 5 The sole potential issue counsel identifies for appeal is whether the trial court erred in dismissing his motion to withdraw his guilty pleas. We agree with counsel that this issue lacks arguable merit.

¶ 6 “Generally, a circuit court loses jurisdiction to vacate or modify its judgment 30 days after entry of judgment.” *People ex. rel. Alvarez v. Skzyd*, 241 Ill. 2d 34, 40 (2011). “This 30-day limitation is incorporated into [Illinois Supreme Court Rule 604(d) (eff. July 1, 2017)], which

governs postjudgment motions in cases \*\*\* where the defendant has pleaded guilty.” *People v. Flowers*, 208 Ill. 2d 291, 303 (2003). Rule 604(d) states in relevant part:

“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).

¶ 7 The 30-day limitation has jurisdictional consequences for a guilty-plea defendant who is subject to Rule 604(d)’s motion requirement:

“Where \*\*\* more than 30 days have elapsed since sentence was imposed and the trial court has not extended the limitation period upon proper application of defendant for good cause shown, the trial court is divested of jurisdiction to entertain a defendant’s motion to vacate the judgment or reconsider the sentence pursuant to Rule 604(d).” *Flowers*, 208 Ill. 2d at 303.

¶ 8 Defendant’s motion to withdraw his pleas was file-stamped on October 20, 2021—over two months after his pleas and sentencing. Nothing indicates that the trial court extended the 30 days for filing a postjudgment motion.

¶ 9 Counsel considers whether, notwithstanding the file-stamped date, defendant’s motion might be deemed timely. Counsel notes that the mailbox rule provides that “pleadings, including posttrial motions [citation], are considered timely filed on the day they are placed in the prison mail system by an incarcerated defendant [citation].” *People v. Shines*, 2015 IL App (1st) 121070, ¶ 31. Illinois Supreme Court Rule 373 (eff. July 1, 2017) states the mailbox rule:

“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.*” (Emphasis added.)

Under Rule 373, “[p]roof of mailing shall be as provided in [Illinois Supreme Court Rule 12 (eff. July 1, 2017)].” Rule 12(b)(6) states that “service by mail by a self-represented litigant residing in a correctional facility” is proved by “certification under section 1-109 of the Code of Civil Procedure of the person who deposited the document in the institutional mail, stating the time and place of deposit and the complete address to which the document was to be delivered.” Ill. S. Ct. R. 12(b)(6) (eff. July 1, 2017).

¶ 10 Counsel suggests that the mailbox rule is inapplicable because the record does not show that defendant included a proof-of-service-by-mail document with his motion to withdraw his pleas. However, in his initial response to appellate counsel’s motion to withdraw, defendant states that, on August 30, 2021, he mailed his motion to withdraw his pleas. He claims to have had previous difficulty with the Kendall County circuit court clerk accepting his documents for filing. He also claims that appellate counsel told him that she, too, had had “issues” with the circuit court clerk. In his second response, defendant includes a sworn affidavit, again claiming that, on August 30, 2021, he mailed his motion to withdraw to the circuit court clerk. Even if true, defendant’s affidavit is not properly before us.

¶ 11 Generally, we may not consider materials outside the appellate record. *People v. Stewart*, 343 Ill. App. 3d 963, 975 (2003). Defendant, however, has recourse in the Postconviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2022)), which permits a defendant to pursue a constitutional

claim based on matters that were outside the record on direct appeal. As the record stands, however, we agree with counsel that there is no nonfrivolous argument that defendant filed his motion to withdraw his guilty pleas within 30 days of the pleas.

¶ 12 Counsel also discusses whether, under the revestment doctrine, the trial court reacquired jurisdiction to rule on defendant's motion to withdraw his pleas. "Under the revestment doctrine, the trial court regains jurisdiction beyond the 30 days following the entry of a final judgment," if certain conditions are met. *People v. Salem*, 2016 IL 118693, ¶ 8. For the doctrine to apply, "both parties must: (1) actively participate in the proceedings; (2) fail to object to the untimeliness of the late filing; and (3) assert positions that make the proceedings inconsistent with the merits of the prior judgment and support the setting aside of at least part of that judgment." (Emphases in original.) *People v. Bailey*, 2014 IL 115459, ¶ 25. As counsel notes, the second and third elements are not met here. First, the State expressly objected to the untimeliness of defendant's motion to withdraw his pleas. Second, the State took no position inconsistent with its aim of preserving the judgments entered on defendant's guilty pleas. The State's acknowledgment that some of the MSR terms were incorrect was not inconsistent with the entry of the plea. Thus, counsel is correct that there is no credible basis to argue for the revestment of defendant's motion to withdraw his plea.

¶ 13 Finally, counsel considers whether the "admonition exception" applies. Counsel's analysis assumes that the exception might in some cases excuse compliance with the 30-day jurisdictional rule. Counsel is mistaken. The admonition exception operates as follows:

"Where a circuit court fails to give applicable Rule 605 admonishments and the defendant attempts to appeal without first filing the motions required by Rule 604(d), the appeal is not dismissed. Rather, the appellate court must remand the cause to the circuit court for strict compliance with Rule 604(d)." *Skryd*, 241 Ill. 2d at 41.

The admonition exception “is for the *appellate court* to apply after defendant timely files a notice of appeal from a guilty plea even though the defendant did not first comply with Rule 604(d)’s condition precedent of filing a postplea motion in the circuit court.” (Emphasis in original.) *Id.* at 42. “The admonition exception cannot restore jurisdiction to the circuit court after 30 days from entry of judgment.” *Id.* Here, because jurisdiction in the trial court had lapsed before defendant filed his motion to withdraw his guilty pleas, the admonition exception cannot apply.

¶ 14 After examining the record, the motion to withdraw, the memorandum of law, and defendant’s responses, we agree with counsel that this appeal presents no issue of arguable merit. Thus, we grant the motion to withdraw, and we affirm the judgment of the circuit court of Kendall County.

¶ 15 Affirmed.