

No. 1-10-2024

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 1602
)	
REGINALD WASHINGTON,)	The Honorable
)	John J. Moran, Jr.,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction regarding guilty plea where defendant did not file a motion to withdraw his guilty plea or attempt to perfect a timely appeal from it.

¶ 2 Defendant Reginald Washington pleaded guilty to burglary in exchange for a sentence of 10 months' time-served and two years' probation. That sentence was subsequently increased to four years' imprisonment after defendant was found guilty of violating the terms of his probation. On appeal, defendant contends that the trial court failed to admonish him in accordance with Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001) when sentencing him to probation.

¶ 3 The record shows, in relevant part, that defendant was charged with the residential burglary of J.T. Robinson's dwelling at 6440 South Paulina Street, in Chicago. Prior to trial,

defendant rejected a plea offer of four years' imprisonment on that charge, and a bench trial ensued. However, proceedings were continued after the State called its first witness, and during the recess, a Supreme Court Rule 402 conference was held which culminated in a plea offer of two years' probation on a reduced charge of burglary. On October 14, 2009, defendant accepted the offer and pleaded guilty to burglary. The court accepted his plea and imposed the agreed upon sentence, which included 10 months' time-served in the Cook County Department of Corrections. Defendant did not file a motion to withdraw his plea or otherwise attempt to perfect a direct appeal from it.

¶ 4 On January 12, 2010, the State filed a petition for violation of probation alleging that defendant tested positive for opiates, failed to provide verification of TASC outpatient treatment, and failed to report to the adult probation department. Following a hearing, the trial court found defendant not guilty of the violations.

¶ 5 On April 30, 2010, the State filed a second petition for violation of probation alleging that defendant failed to report to the adult probation department, failed to submit to drug testing, and tested positive for opiates. The State also filed a supplemental petition on June 10, 2010, alleging that defendant failed to report for TASC intake, and had not begun TASC outpatient treatment. Following a hearing, the court found defendant guilty of violating his probation. On June 24, 2010, the court sentenced defendant to four years' imprisonment and denied his motion to reconsider sentence.

¶ 6 In this appeal from that judgment, defendant contends that the trial court did not admonish him in accordance with Rule 605(b) when sentencing him to probation on his plea conviction, and requests that the cause be remanded for such admonishments and an opportunity

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for him to file a motion to vacate his guilty plea. The State responds that this court lacks jurisdiction to consider any issue stemming from defendant's guilty plea proceedings.

¶ 7 We observe that the power of an appellate court to consider the merits of a case attaches only upon compliance with the rules governing appeals. *People v. Flowers*, 208 Ill. 2d 291, 308 (2003). In this case, defendant was required to file a motion to withdraw his guilty plea and vacate judgment within 30 days of sentencing in order to appeal from his negotiated plea of guilty. Ill. S. Ct. R. 604(d) (eff. Jul. 1, 2006). He was also required to file a notice of appeal within 30 days of the denial of that motion to perfect his appeal and vest this court with jurisdiction (Ill. S. Ct. R. 604(d), 606 (eff. Mar. 20, 2009)). *In Re J.T.*, 221 Ill. 2d 338, 346 (2006).

¶ 8 The record shows that defendant did not file anything within 30 days of being sentenced to probation, and we thus find that the outcome of this case is controlled by the supreme court's decision in *J.T.* In that case, respondent pleaded guilty in exchange for a sentence of probation and did not file a timely motion to withdraw his plea or a notice of appeal. *J.T.*, 221 Ill. 2d at 342-43. He was then found guilty of violating his probation, and sentenced to the Department of Corrections 11 months after his sentence of probation had been imposed. *J.T.*, 221 Ill. 2d at 343-44. On appeal, respondent claimed that he had not been properly admonished pursuant to Rule 605(b) when he was sentenced to probation, and the appellate court remanded the cause to the circuit court for respondent to receive proper admonishments. *J.T.*, 221 Ill. 2d at 344-45.

¶ 9 The supreme court subsequently vacated the appellate court's judgment, however, finding that the court had no jurisdiction to consider any issues relating to respondent's guilty plea or sentence of probation where he failed to file a timely notice of appeal from that sentencing order,

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a motion to withdraw plea or reconsider sentence, or a motion for leave to file a late notice of appeal. *J.T.*, 221 Ill. 2d at 346-47. The supreme court also noted that the appellate court's view that a conviction and sentence entered without proper Rule 605(b) admonishments can be challenged at any time was "clearly incorrect" under *People v. Jones*, 213 Ill. 2d 498 (2004). *J.T.*, 221 Ill. 2d at 346.

¶ 10 Here, likewise, defendant entered a negotiated plea of guilty to burglary in exchange for a sentence of probation on October 14, 2009, and did not file a timely notice of appeal from that judgment, a motion to withdraw his plea and vacate judgment, or a motion for leave to file a late notice of appeal. Therefore, defendant's notice of appeal filed on June 24, 2010, more than eight months later, did not vest this court with jurisdiction to consider any issues arising from his guilty plea or his sentence. *J.T.*, 221 Ill. 2d at 346-47.

¶ 11 In so concluding, we note that defendant's reliance on *People v. Winston*, 316 Ill. App. 3d 618, 620 (2000) for the proposition that "a defendant may attack the judgment at any time when the trial court has failed to give proper admonishments" is clearly misplaced where, as noted above, the supreme court has explicitly deemed such a proposition "clearly incorrect." *J.T.*, 221 Ill. 2d at 346. We further note that *People v. Hayes*, 336 Ill. App. 3d 145 (2002), also cited by defendant, is distinguishable from the case at bar in that there was no dispute that a timely notice of appeal had been filed in that case. We therefore dismiss this cause for lack of jurisdiction.

¶ 12 Appeal dismissed.