

THIRD DIVISION
December 12, 2012

No. 1-10-3024

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

MICHAEL C. ANTONELLI,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 10 CH 9620
)	
JESSE WHITE, Secretary of State,)	Honorable
)	Rita Mary Novak,
Defendant-Appellee.)	Judge Presiding.

JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Sterba concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction where notice of appeal was untimely filed and did not comply with the mailing rule.

¶ 2 Following a 1994 conviction for driving under the influence of alcohol (DUI), respondent, Jesse White, as Secretary of State, revoked the driver's license and driving privileges of petitioner, Michael C. Antonelli. Respondent subsequently granted petitioner an employment restricted driving permit (RDP), which petitioner challenged by filing an "appeal" in the circuit court of Cook County. The circuit court granted respondent's motion to dismiss, and also

affirmed respondent's final administrative decision denying full reinstatement of petitioner's driving privileges.

¶ 3 On appeal, petitioner, *pro se*, requests this court to reverse and remand, or simply vacate the order denying him relief, and to reinstate his full driving privileges. He maintains that the continued revocation of his driving privileges stands on constitutionally and statutorily infirm grounds, namely, his 1994 DUI conviction.

¶ 4 The record shows that in July 1994, petitioner entered a guilty plea to DUI and was sentenced to 360 days' incarceration. This sentence was served, at his request, in federal custody concurrently with any federal sentence he received. Petitioner subsequently filed a motion to vacate the plea, which was denied, and this court affirmed that judgment on direct appeal.

People v. Antonelli, No. 1-95-0064 (1996) (unpublished order under Supreme Court Rule 23).

¶ 5 In October 1994, respondent revoked petitioner's driver's license and driving privileges based on the DUI conviction. Petitioner sought full reinstatement of his driving privileges in 2002, but his request was denied after respondent determined that petitioner failed to provide evidence sufficient to carry his burden of proving that his alcohol/drug problem had been resolved, and that he was not a danger to public safety and welfare.

¶ 6 In 2009, petitioner again sought reinstatement of his driving privileges, or, in the alternative, an RDP. Petitioner maintained that he pleaded guilty in 1994 without the required "ASEP" evaluation, and, as a result, his conviction was obtained illegally. He further maintained that the circuit court improperly denied his motion to vacate his guilty plea outside his presence and without representation of counsel, and that the use of his DUI conviction to revoke his driving privileges was unconstitutional. A hearing was held in the matter, after which respondent adopted the findings and recommendations of the hearing officer on February 2, 2010, denying petitioner's request for full reinstatement of his driving privileges, but granting him an RDP.

This allowed him to drive to and from work and perform job-related duties for his employer on the condition that he comply with the terms and conditions of the Breath Alcohol Ignition Interlock Device program.

¶ 7 On March 9, 2010, petitioner filed a complaint in the circuit court of Cook County seeking administrative review of the order entered on February 2, 2010, and/or petition for declaratory and injunctive relief and/or petition for writ of *mandamus*. In support, he filed a brief requesting that his DUI conviction be vacated and set aside for the specific purpose of full reinstatement of his driving privileges. Petitioner maintained that the 1994 DUI conviction was based on constitutional and statutory "infirmities," that he was illegally sentenced on his 1994 DUI without an "ASEP" evaluation, and that he did not legally waive counsel on his motion to vacate the plea or his presence on the motion.

¶ 8 Respondent filed a memorandum in support of the administrative decision, which maintained that petitioner's long history of substance abuse supported the decision to issue an RDP as a probationary device. Respondent also noted that petitioner had unaddressed psychological issues that supported the decision denying full reinstatement of petitioner's driving privileges, and that his poor driving record showed that he was not yet entitled to full reinstatement of his driving privileges. Respondent asserted that it did not err in denying petitioner's request to exclude his 1994 DUI conviction from consideration in reaching its decision on his driving privileges, and that the instant proceedings are an improper forum to challenge his 1994 guilty plea.

¶ 9 Respondent also filed a motion to dismiss petitioner's "appeal," maintaining that the circuit court lacked subject matter jurisdiction and that the court had no jurisdiction to review petitioner's 1994 DUI conviction. On August 31, 2010, the circuit court granted respondent's motion to dismiss and affirmed the final administrative decision. This appeal followed.

¶ 10 We initially consider respondent's contention that petitioner failed to invoke the jurisdiction of this court because the proof of service for his notice of appeal does not establish a timely filing in accordance with Illinois Supreme Court Rules 373 (eff. Feb. 1, 1994 (change eff. Dec. 29, 2009, to provide for sending documents via third-party commercial carriers)) and 12(b) (eff. Nov. 15, 1992 (change eff. Dec. 29, 2009, to provide for documents sent via third-party commercial carriers)).

¶ 11 A notice of appeal is timely if it is filed within 30 days of the entry of a final judgment, or the order disposing of the last pending postjudgment motion. Ill. S. Ct. R. 303(a) (eff. June 4, 2008); *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 521 (2001). Pursuant to Rule 373, the notice of appeal may be filed by mail (*Secura Ins. Co. v. Illinois Farmers Ins. Co.*, 232 Ill. 2d 209, 214-15 (2009)), and "[i]f [the necessary papers are] received after the due date, the time of mailing *** shall be deemed the time of filing. Proof of mailing *** shall be as provided in Rule 12(b)(3). This rule also applies to the notice of appeal filed in the trial court." Ill. S. Ct. R. 373 (eff. Dec. 29, 2009). The notice of appeal filed by petitioner in this case was file-stamped October 6, 2010, more than 30 days after the circuit court entered its order on August 31, 2010. In his notice, petitioner included a "certificate of service" wherein he states that "after having been duly sworn," he mailed a copy of the notice to the circuit court on September 30, 2010. This notice is signed by petitioner with a parenthetical below his signature, *i.e.*, "28 USC Section 1746"; however, this is not recognized as an acceptable substitute for notarization under the Code of Civil Procedure. See *People v. Tlatenchi*, 391 Ill. App. 3d 705, 715 (2009).

¶ 12 Supreme Court Rule 12(b)(3) (eff. Dec. 29, 2009) requires a certificate of an attorney or an affidavit of a person other than an attorney who deposited the document in the mail stating the time and place of mailing, the complete address on the envelope and the fact that proper postage was prepaid. A writing that has not been sworn to before an authorized person is not an affidavit

as required by Rule 12(b)(3). *Tlatenchi*, 391 Ill. App. 3d at 714-15 (citing *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 493-94 (2002)). An affidavit has been consistently defined for over 100 years as simply a declaration, on oath, in writing, sworn to by a party before some person who has authority under the law to administer oaths. *Tlatenchi*, 391 Ill. App. 3d at 714.

¶ 13 Since petitioner is not an attorney, he was required to provide an affidavit in accordance with Rule 12(b)(3). *Tlatenchi*, 391 Ill. App. 3d at 714. Petitioner did not comply with this requirement, and therefore, failed to invoke the jurisdiction of this court to consider his cause. *Secura Ins. Co.*, 232 Ill. 2d at 216-17. We are not insensitive to the concerns surrounding a *pro se* filed notice of appeal (*Secura Ins. Co.*, 232 Ill. 2d at 217). However, due to petitioner's untimely filing of his notice of appeal and his failure to comply with the affidavit requirement of Rule 12(b)(3), we have no jurisdiction over this appeal. Therefore, we dismiss the appeal for lack of jurisdiction.

¶ 14 Appeal dismissed.