

NOTICE
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2012 IL App (4th) 100977-U

Filed 5/14/12

NO. 4-10-0977

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Jahquan H., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 10JD36
JAHQUAN H.,)	
Respondent-Appellant.)	Honorable
)	Elizabeth A. Robb,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed respondent's sentence of 60 months' probation as modified and remanded with directions for the trial court to issue an amended probation order providing that respondent's probation terminate on his twenty-first birthday.

¶ 2 Following a bench trial, the trial court found respondent, Jahquan H., born April 9, 1993, guilty of robbery, a Class 2 felony (720 ILCS 5/18-1(a) (West 2010)), and aggravated battery on a public way, a Class 3 felony (720 ILCS 5/12-4(b)(8) (West 2010)). The court sentenced respondent to 60 months' probation. Respondent appeals, arguing that his sentence must be modified to terminate on his twenty-first birthday. We affirm as modified and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 On March 31, 2010, the State filed a petition for adjudication of wardship alleging

that respondent committed robbery and aggravated battery on a public way. On April 26, 2010, the trial court conducted a bench trial.

¶ 5 At the hearing, Brendan Mathson testified on behalf of the State. Mathson testified that on March 15, 2010, he was walking on North Hershey between 9 and 9:30 p.m. when he decided to stop at the Convenient Food Mart. While in the parking lot of the convenient store, Mathson attempted to walk past a group of five to six African American males when one of them backed up, hit him in the face, and then kicked him after he fell to the ground. Mathson identified respondent as the person that hit him. Mathson also testified that one of the men pick-pocketed him while he was on the ground, taking a few dollars, some change, his knife, and his identification card. Mathson testified he did not see who went through his pockets because his head was to the ground, but he testified respondent was the only person around him when his possessions were taken.

¶ 6 Respondent testified that he hit Mathson after Mathson used a racial slur, he never went through Mathson's pockets, and the only thing he took was some cigarettes that fell out of Mathson's pockets. Mathson denied that he used a racial slur. Mathson also testified he did not know whether he had cigarettes in his pocket that night and if respondent took them because Mathson often misplaced his cigarettes.

¶ 7 The trial court found respondent guilty on both charges. On October 19, 2010, the court adjudicated respondent a ward of the court and sentenced respondent to "60 months[] probation." The court's written order of probation provides that respondent is to placed on probation for 60 months and must obey the conditions of probation "until minor's [twenty-fir]st birthday, April 9, 2014."

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, respondent argues that the trial court's sentencing order must be modified to terminate on respondent's twenty-first birthday because the juvenile court will no longer have jurisdiction over respondent under the Juvenile Court Act of 1987 (Juvenile Court Act) once respondent reaches the age of 21 (705 ILCS 405/5-755 (West 2010)). Respondent asserts that because the probation order specifies the term as "60 months," the sentencing order entered on October 19, 2010, will not terminate until October 19, 2015, after respondent's twenty-first birthday on April 9, 2014. Respondent requests this court to issue an order specifying that his probation is to terminate on April 9, 2014.

¶ 11 The State argues that the probation order specifies that respondent's probation is to terminate on respondent's twenty-first birthday and no further clarification is needed. We agree with respondent and remand with directions to amend the probation order.

¶ 12 A. Jurisdiction

¶ 13 Initially, the State argues that this court does not have jurisdiction over respondent's appeal. The State contends that respondent's notice of appeal, filed November 12, 2010, referred solely to the April 26, 2010, adjudicatory order and only alleged the State did not find respondent guilty beyond a reasonable doubt, and thus, it did not confer jurisdiction on this court to review the October 19, 2010, sentencing order.

¶ 14 Respondent contends that his notice of appeal was timely filed, as it was filed within 30 days after the trial court sentenced respondent on October 19, 2010. Respondent argues "[t]he timely filing of a notice of appeal is the only jurisdictional step required to initiate

appellate review." *People v. Lewis*, 234 Ill. 2d 32, 37, 912 N.E.2d 1220, 1223 (2009). We agree with respondent.

¶ 15 The purpose of a notice of appeal is to advise the prevailing party that review is sought. *General Motors Corp. v. Papas*, 242 Ill. 2d 163, 173, 950 N.E.2d 1136, 1142 (2011). Our supreme court has held that a notice of appeal is to be liberally construed and considered as a whole. *People v. Smith*, 228 Ill. 2d 95, 104, 885 N.E.2d 1053, 1058 (2008). A notice of appeal will confer jurisdiction on an appellate court when the notice "fairly and adequately sets out the judgment complained of and the relief sought so that the successful party is advised of the nature of the appeal." *Burtell v. First Chapter Service Corp.*, 76 Ill. 2d 427, 433-34, 394 N.E.2d 380, 383 (1979). Moreover, failure to strictly comply with the form of the notice is not fatal unless the appellee is prejudiced by the deficiency. *Lewis*, 234 Ill. 2d at 37, 912 N.E.2d at 1224.

¶ 16 Respondent timely filed a notice of appeal on November 12, 2010, within 30 days of the trial court's issuance of its October 19, 2010, sentencing order in compliance with Illinois Supreme Court Rule 303(a) (corrected eff. June 4, 2008). Although respondent's notice of appeal listed the April 26, 2010, adjudicatory order as the order being appealed, it also listed respondent's case number. Respondent also filed an amended notice of appeal apprising the State of his intent to address the sentencing order, to which the State did not object. Further, the State made arguments directed toward the sentencing issue raised by respondent in his brief. Therefore, it cannot be said that the State had insufficient notice of the issue or was prejudiced in any way. See *People v. Decaluwe*, 405 Ill. App. 3d 256, 264, 938 N.E.2d 181, 188 (2010) (appellate court had jurisdiction even though defendant failed to specifically list his conviction in his notice of appeal, because the State was clearly informed of the nature of the appeal and made

arguments directed to the issue of the conviction; therefore, it could not be concluded that the State did not have adequate notice of the issue, nor was it prejudiced). We also note that the State does not argue in its brief that it was prejudiced in any way.

¶ 17 We conclude we do have jurisdiction over this appeal as respondent's original notice of appeal was timely filed. See *People v. Patrick*, 2011 IL 111666, ¶ 26, 960 N.E.2d 1114, 1120 (where a timely filed notice of appeal adequately informs the prevailing party that the unsuccessful litigant seeks review, the purpose of a notice of appeal is served, and the notice is sufficient to confer jurisdiction upon the appellate court). Respondent's reference to the adjudicatory order in the notice of appeal was not determinative of the issues on appeal. See *Patrick*, 2011 IL 111666, ¶ 26, 960 N.E.2d at 1120 (the briefs of the parties, "not the notice of appeal, specify the precise points relied upon for reversal"). The State was adequately and fairly notified of the appeal, and the State was not prejudiced by respondent's technical deficiency of failing to identify the October 19, 2010, sentencing order in his notice of appeal. See *Patrick*, 2011 IL 111666, ¶ 27, 960 N.E.2d at 1120 (where the appellee is not prejudiced by a deficiency in the notice, failure to strictly comply is not fatal).

¶ 18 The State also argues that this court improperly granted respondent's motion to file an amended notice of appeal on March 28, 2011, and therefore this court does not have jurisdiction pursuant to the amended notice of appeal. However, because we conclude respondent's November 12, 2010, original notice of appeal was sufficient to confer jurisdiction upon this court, it is not necessary to address the State's alternative argument that this court lacks jurisdiction.

¶ 19

B. Respondent's Probation

¶ 20 A juvenile may be sentenced to the same term as an adult convicted of the offense. Here, respondent was convicted of robbery, a Class 2 felony, punishable by a prison term of three to seven years (730 ILCS 5/5-4.5-35(a) (West 2010)), and aggravated battery on a public way, a Class 3 felony, punishable by a prison term of two to five years (730 ILCS 5/5-4.5-40(a) (West 2010)). Robbery is a forcible felony (720 ILCS 5/2-8 (West 2010)). Section 5-715(1) of the Juvenile Court Act (705 ILCS 405/5-715(1) (West 2010)) authorizes a five-year probationary or conditional discharge term, or until the minor reaches 21, whichever is less, for such felonies.

¶ 21 On October 19, 2010, the trial court sentenced respondent to "60 months[]" probation." The sentencing order explicitly states respondent is to serve 60 months' probation, but it does not state it terminates on respondent's twenty-first birthday. Therefore, respondent argues, his probation will not terminate until October 19, 2015, after respondent has turned 21. Respondent's probation order includes a hand-written instruction for respondent to obey the conditions of his probation until his twenty-first birthday. However, the probation order also does not specifically state that probation will terminate on respondent's twenty-first birthday.

¶ 22 The Juvenile Court Act requires that any proceedings under the act are to terminate on the minor's twenty-first birthday. See 705 ILCS 405/5-710 (West 2010). Further, our supreme court has made it clear "that the plain intent of the Juvenile Court Act was to set the age of 21 as the maximum for all juvenile dispositions." *In re Jamie P.*, 223 Ill. 2d 526, 539, 861 N.E.2d 958, 966 (2006). Because the sentencing and probation order is unclear as to whether respondent's probation will definitively terminate on respondent's twenty-first birthday, we

remand with directions for the issuance of an amended probation order. The probation order is to provide that the minor shall be "placed on an order of probation for a period of 60 months and shall obey the following conditions, i.e., probation terminating on the minor's twenty-first birthday, April 9, 2014."

¶ 23

III. CONCLUSION

¶ 24 We remand with directions for the trial court to issue an amended probation order, specifying that respondent's probation is to terminate on his twenty-first birthday.

¶ 25 Affirmed as modified; cause remanded with directions.