

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).

2012 IL App (4th) 110218-U

Filed 10/3/12

NO. 4-11-0218

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: GERMAINE B., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v.	)	No. 10JD38
GERMAINE B.,	)	
Respondent-Appellant.	)	Honorable
	)	Estaban F. Sanchez,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Justices Steigmann and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) Respondent's original notice of appeal was sufficient to confer jurisdiction on the appellate court.

(2) Respondent's conviction of theft of property from the person violated the one-act, one-crime doctrine and should not have been included on the order of adjudication as a basis for the trial court's delinquency finding.

¶ 2 On December 12, 2010, the trial court entered an order of adjudication, finding respondent, Germaine B., born June 11, 1995, delinquent based on charges of robbery and theft of property from the person, both stemming from a purse snatching. Respondent appeals, arguing the court erred by not vacating the theft-of-property-from-the-person count because it violated the one-act, one-crime doctrine. We agree, affirm as modified, and remand with directions for the court to amend the order of adjudication.

¶ 3

## I. BACKGROUND

¶ 4 In June 2010, the State filed a two-count delinquency petition against respondent, charging him with robbery (720 ILCS 5/18-1(a) (West 2008)) and theft of property from the person (720 ILCS 5/16-1(a)(1)(A) (West 2008)). At respondent's bench trial, Jane Potts testified she was in the parking lot of a Dollar Tree store in Springfield on June 27, 2010. Two young males on bicycles passed her and the young male on her left grabbed her purse off her shoulder and rode away with the bag. She chased the young males for a short period before realizing she would not be able to catch them. She then flagged down a police officer and reported the incident.

¶ 5 Douglas Eisenhauer testified he was in the Dollar Tree and saw two young, black males ride by Potts and grab her purse. One of the males was wearing a blue T-shirt and the other was wearing a yellow T-shirt. Eisenhauer testified the males appeared to be in their mid-teens. He provided the police with a description and later identified the suspects after police apprehended them. Eisenhauer identified respondent in court as one of the two young males who participated in the purse snatching but acknowledged he probably could not identify respondent if respondent was not the only black teenager in the courtroom.

¶ 6 Officer Chris Walter of the Springfield police department testified he was dispatched to the Dollar Tree in response to a robbery call. When Walter arrived, Potts described the perpetrators to him as two black teenage males, both on blue bicycles. She said the young males took her brown leather purse containing \$26 in cash, credit cards, her driver's license, and personal items. Another witness, Eisenhauer, described the suspects as black teen males on bikes, explaining that one was wearing a yellow shirt and the other was wearing a blue shirt.

Police officers later found the suspects at an apartment close to the Dollar Tree. Walter testified Eisenhower was able to identify the two suspects. The police officers found \$26 in respondent's shoe and discovered Potts's purse 30 feet from the back door of the apartment. Officers also found two bicycles in front of the apartment.

¶ 7 Respondent testified his mother gave him \$30 to purchase some items from the store. He was wearing pajamas and a black shirt. Respondent claimed the money the officers found in his shoe was the change he received from the store after he made his purchases. He testified he did not know the other suspect was planning on taking a woman's purse. According to his testimony, when he left the store and got on his bike, the other suspect was not with him. Respondent stated he did not hear anyone yelling at him and he did not know anyone was running after him while he was riding his bike home.

¶ 8 The trial court found respondent guilty of both robbery and theft of property from the person. The court stated the theft-of-property-from-a-person count would merge into the robbery count for sentencing purposes and would be dismissed.

¶ 9 On February 23, 2011, the trial court found it was in respondent's best interest to make him a ward of the court. The court placed respondent on probation until February 2016. Respondent filed a motion to reconsider sentence on March 3, 2011. The court denied the motion on March 9, 2011.

¶ 10 That same day, respondent's trial counsel filed a notice of appeal on his behalf. On June 17, 2011, respondent's appellate counsel filed a motion for leave to file an amended notice of appeal. This court allowed the motion on June 22, 2011.

¶ 11

## II. ANALYSIS

¶ 12 The State argues this court does not have jurisdiction over this appeal. According to the State, respondent's original notice of appeal was insufficient to confer jurisdiction on this court. Respondent's notice of appeal stated:

"An appeal is taken from the order or judgment described below.

1. Adjudication of delinquency occurred on December 22, 2011.
2. Final disposition on this matter occurred on February 23, 2011, and the Minor was adjudicated Delinquent.
3. The Minor was sentenced to probation.
4. Hearing on the Motion to Reconsider the Minor's sentence occurred on March 9, 2011.
5. Appeal is taken to the 4th District Appellate Court of Illinois.
6. The address to which notices shall be sent is:  
  
2715 S. MacArthur Blvd  
  
Apt 108  
  
Springfield, IL
7. The Minor is indigent and has no attorney for appeal. Therefore, he is requesting that an attorney be appointed for him."

¶ 13 Supreme Court Rule 660(a) states "[a]ppeals from final judgments in delinquent minor proceedings, except as otherwise specifically provided, shall be governed by the rules applicable to criminal cases." Ill. S. Ct. R. 660(a) (eff. October 1, 2001). Supreme Court Rule 606(d) provides a sample notice of appeal form for criminal appeals and states a notice of appeal

"shall be substantially" in that form. Ill. S. Ct. R. 606(d) (eff. March 20, 2009).

¶ 14 Although the State acknowledges respondent timely filed his notice of appeal, the State argues the notice of appeal was defective because it failed to state "(a) the offenses of which respondent was found guilty, (b) the length of respondent's sentence, and (c) the nature of the order appealed from." The State also argues respondent's motion for leave to file an amended notice of appeal was (a) "untimely as a motion for leave to file an amended notice of appeal, and (b) insufficient as a motion for leave to file a late notice of appeal."

¶ 15 Respondent argues his original notice of appeal was sufficient to invoke the jurisdiction of this court. We agree. Our supreme court has stated a notice of appeal is to be liberally construed. *People v. Smith*, 228 Ill. 2d 95, 104, 885 N.E.2d 1053, 1058 (2008). The notice of appeal serves to notify the party who prevailed in the trial court that the losing party seeks review of the trial court's judgment. *Smith*, 228 Ill. 2d at 104, 885 N.E.2d at 1058. According to our supreme court, a notice of appeal should be considered as a whole and judged sufficient to establish jurisdiction in the appellate court if it adequately and fairly sets out the judgment complained of and the relief requested, thereby notifying the party who was successful in the trial court of the nature of the appeal. *Smith*, 228 Ill. 2d at 105, 885 N.E.2d at 1058-59. If a notice of appeal is merely deficient with regard to form rather than substance, and the appellee is not prejudiced, an appealing party's failure to strictly comply with the form of notice is not fatal to the appeal. *Smith*, 228 Ill. 2d at 105, 885 N.E.2d at 1059.

¶ 16 When viewed as a whole, respondent's notice of appeal, while deficient in form, was sufficient to place the State on notice as to the substance of this appeal. The notice of appeal made clear the subject of the appeal would be the trial court's December 22, 2011, adjudication

of delinquency and court's final disposition of the matter on February 23, 2011. The State does not argue it was prejudiced in any manner by respondent's notice of appeal.

¶ 17 The State's reliance on *Smith* in this case is misplaced. In that case, the defendant pleaded guilty to possession of a controlled substance with intent to deliver in November 2004. *Smith*, 228 Ill. 2d at 98, 885 N.E.2d at 1055. The trial court accepted defendant's plea and entered judgment against him. *Smith*, 228 Ill. 2d at 98, 885 N.E.2d at 1055. In December 2004, the appellant filed a motion to withdraw his guilty plea, which the trial court denied. *Smith*, 228 Ill. 2d at 99, 885 N.E.2d at 1055. The defendant filed a direct appeal, and the appellate court affirmed. *Smith*, 228 Ill. 2d at 99, 885 N.E.2d at 1055. In February 2006, the defendant filed a *pro se* motion to correct sentence, challenging the constitutionality of his mandatory-supervised-release (MSR) term. *Smith*, 228 Ill. 2d at 99, 885 N.E.2d at 1055. That same month, the trial court denied this motion *sua sponte* and found the pleadings frivolous and patently without merit. *Smith*, 228 Ill. 2d at 99-100, 885 N.E.2d at 1056. The trial court sent a letter to the warden of the prison where the defendant was incarcerated, "informing the warden of the court's finding and pointing specifically to section 3-6-3(d) of the Corrections Code (730 ILCS 5/3-6-3(d) (West 2002))." *Smith*, 228 Ill. 2d at 100, 885 N.E.2d at 1056. Section 3-6-3(d) allows the Department of Corrections to revoke up to 180 days of a prisoner's good-conduct credit in certain situations when a prisoner has filed a frivolous lawsuit. *Smith*, 228 Ill. 2d at 100, 885 N.E.2d at 1056.

¶ 18 On March 20, 2006, the defendant filed a timely *pro se* notice of appeal. *Smith*, 228 Ill. 2d at 101, 885 N.E.2d at 1056. The notice of appeal only referred to the trial court's November 2004 judgment of conviction. *Smith*, 228 Ill. 2d at 101, 885 N.E.2d at 1056. It did not reference the court's February 2006 order denying his motion for sentence correction. *Smith*,

228 Ill. 2d at 101, 885 N.E.2d at 1056. However, in his appellate brief, the defendant identified the judgment appealed from as the trial court's February 2006 denial of his motion to correct sentence. *Smith*, 228 Ill. 2d at 101, 885 N.E.2d at 1056. Our supreme court held the defendant's March 20, 2006, notice of appeal did not give the appellate court jurisdiction over the issues raised by the defendant in the appellate court. *Smith*, 228 Ill. 2d at 105, 885 N.E.2d at 1059.

According to the court:

"Defendant's notice of appeal, no matter how liberally construed, cannot be said to have fairly and adequately set out the judgment complained of—the court's order of February 21, 2006—or the relief sought. The notice not only failed to mention the February 21, 2006, order; it specifically mentioned a different judgment, and only that judgment. This was more than a mere defect in form. Defendant's notice failed to apprise the State of the nature of the appeal. The notice, as it appears in the record, failed to confer jurisdiction on the appellate court to hear defendant's appeal." *Smith*, 228 Ill. 2d at 105, 885 N.E.2d at 1059.

¶ 19 Unlike the defendant's notice of appeal in *Smith*, respondent's notice of appeal in this case adequately sets out the judgment complained of. The notice adequately apprised the State of the nature of this appeal. While we earlier noted the form of respondent's notice of appeal was deficient, our supreme court has made clear "[t]he failure to comply strictly with the form of the notice is not fatal if the deficiency is nonsubstantive and the appellee is not prejudiced." *People v. Lewis*, 234 Ill. 2d 32, 37, 912 N.E.2d 1220, 1224 (2009). The deficiency

in this case was nonsubstantive, and the State was not prejudiced. As a result, respondent's original notice of appeal conferred jurisdiction on this court.

¶ 20 Because we have determined we have jurisdiction, we now turn to the merits of respondent's appeal. Respondent argues the trial court erred in failing to dismiss the theft delinquency finding pursuant to the one-act, one-crime doctrine because the robbery and theft charges were based on a single act. After respondent's trial, the court stated the theft count would be dismissed at sentencing. However, the issue was never raised at the sentencing hearing and the adjudicatory order reflects a finding of delinquency for both theft from the person and robbery. The State concedes, even though respondent forfeited this issue by not raising it in his motion to reconsider sentence, the trial court erred in not vacating the theft count and the plain error rule applies.

¶ 21 We accept the State's concession. The record in this case shows both the robbery and theft charges were based on the same physical act. Our supreme court has held "[p]rejudice results to the defendant \* \* \* in those instances where more than one offense is carved from the same physical act." *People v. King*, 66 Ill. 2d 551, 566, 363 N.E.2d 838, 844 (1977). Further, in *In re Samantha V.*, 234 Ill. 2d 359, 375, 917 N.E.2d 487, 497 (2009), our supreme court held the one-act, one-crime doctrine applies to juvenile proceedings. In addition, the supreme court stated "it is well established that a one-act, one crime violation affects the integrity of the judicial process, thus satisfying the second prong of the plain-error test." *Samantha V.*, 234 Ill. 2d at 378-79, 917 N.E.2d at 499.

¶ 22

### III. CONCLUSION

¶ 23 For the reasons stated, we affirm as modified and remand this case with directions

for the trial court to correct the order of adjudication to reflect the court found respondent delinquent based on the robbery charge, removing the reference to the theft-from-the-person charge.

¶ 24            Affirmed as modified; cause remanded with directions.