

No. 1-12-1550

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. 08 MC3 6370
)	
ROSEANNA CASSANO,)	Honorable
)	Jill Cerone-Marisie,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's motion to withdraw her guilty plea was properly dismissed by the circuit court; affirmed.
- ¶ 2 Defendant Roseanna Cassano¹ entered a negotiated plea of guilty to one count of retail theft and was sentenced to one year of conditional discharge, 56 hours of community service, and fines, fees, and costs totaling \$275. On appeal, defendant contends the trial court erred when it dismissed her motion to withdraw her guilty plea for lack of jurisdiction. We affirm.

¹ Defendant's name is also spelled "Rosanna Cassano" in the record. We use the spelling on defendant's notice of appeal.

¶ 3 The record shows that defendant was charged with one count of retail theft and one count of battery after an incident on or about September 18, 2008 in which she was alleged to have taken several items of merchandise from a J.C. Penney store in Schaumburg and pushed a loss prevention officer.

¶ 4 On February 2, 2009, defendant and her counsel, Ernest Blomquist, appeared in court and stated that defendant would plead guilty to one count of retail theft pursuant to an agreement. The State agreed to dismiss the battery charge. The court admonished defendant regarding the rights she was giving up by pleading guilty, the sentencing range for the offense, and the potential immigration consequences of her conviction. The parties then stipulated to a factual basis. During sentencing, defense counsel stated that defendant had severe medical problems and asked that defendant be assigned community service in the form of light office duty. Defendant was sentenced to one year of conditional discharge to terminate on January 7, 2010, 56 hours of community service, and was required to pay \$275 in fines, fees, and court costs.

¶ 5 On March 3, 2009, defendant, through new counsel, M. Gloria Najera, filed a motion to withdraw her guilty plea and vacate her conviction. The motion alleged, in part, that Blomquist had given defendant erroneous advice about the immigration-related consequences of her guilty plea and that Blomquist had threatened and frightened defendant into pleading guilty. As a result, the plea was not entered knowingly and voluntarily.

¶ 6 On March 17, 2009, defendant appeared in court with a social services representative and before a different judge than the one who presided over the plea proceeding. The representative stated that defendant submitted medical documentation showing that she was unable to perform community service, and accordingly, the court vacated the community service portion of her sentence. The court then ascertained defendant's understanding that she still owed fines and

court costs and told defendant she was still on conditional discharge, to which defendant replied, "Thank you."

¶ 7 On January 3, 2012, through new counsel, Joseph Colsant, defendant filed a motion entitled "Amended Motion to Withdraw Guilty Plea." The motion alleged that defendant's plea counsel provided erroneous advice regarding the immigration-related consequences of her plea, and if she had been correctly advised, she would have insisted on a different agreement or would have insisted on going to trial. Additionally, the motion asserted it was timely filed because it amended a motion that was filed within 30 days of defendant's plea. Attached to the motion was an unsworn affidavit from defendant that averred that the attorney who prepared the original motion to withdraw the guilty plea, Najera, did not put the motion before the court despite defendant's continuous and numerous requests.

¶ 8 After several continuances, a hearing on the motion was held on April 27, 2012. There, the State contended that defendant's original motion to withdraw her guilty plea, filed on March 3, 2009, should be dismissed for want of prosecution because no hearing date was ever set for that motion. The State further asserted that if the motion were stricken, then the amended motion would be untimely filed, depriving the court of jurisdiction to consider it. Defendant contended that although the original motion was timely filed, the motion did not receive a timely hearing because Najera did not follow through on the motion.

¶ 9 The court dismissed the motion, finding that defendant's original motion was timely filed but was not filed properly or in accordance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) because it was not supported by an affidavit and promptly presented to the judge who sentenced defendant. When defendant appeared on March 17, 2009 to vacate the community service portion of her sentence, she did not mention the previously filed motion to withdraw her guilty plea, and moreover, indicated she understood that she was still subject to the rest of her

sentence. Defendant paid her fees in July 2009 and her conditional discharge terminated in January 2010. Defendant brought the amended motion to withdraw her plea years after pleading guilty and having served her sentence. Based on *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34 (2011) and Rule 604(d), the trial court concluded that the motion was untimely, not proper, and that the court did not have jurisdiction to consider the motion.

¶ 10 On appeal, defendant contends the trial court erred in dismissing her motion to withdraw her guilty plea for lack of jurisdiction. Defendant argues the trial court's reliance on *Skryd* was misplaced because *Skryd* involved a defendant who filed a motion to withdraw his guilty plea 12 years after pleading guilty, and here, defendant's motion to withdraw her plea was timely filed. As a result, the trial court retained jurisdiction to hear defendant's motion. In response, the State contends that the trial court properly dismissed defendant's motion because, although the motion was timely filed, defendant abandoned the motion by failing to bring it to the court's attention and request the court to rule on it.

¶ 11 We agree with the State that defendant abandoned her original motion to withdraw her guilty plea. In doing so, we note that we review the trial court's judgment, not its rationale (*People v. Rodriguez*, 187 Ill. App. 3d 484, 489 (1989)), and may affirm the trial court's judgment on any basis supported by the record (*People v. Dinelli*, 217 Ill. 2d 387, 403 (2005)). Under Rule 604(d), to challenge a plea, a defendant must file a motion to withdraw the guilty plea and vacate the judgment within 30 days of the date on which the sentence was imposed. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Further, the motion "shall be presented promptly" to the trial judge who sentenced the defendant, and if that judge is not sitting in the court where the judgment was entered, then to the chief judge of the circuit or his designee. *Id.* Rule 604(d) also states that the motion "shall be heard promptly." *Id.* This procedure, and its corresponding emphasis on promptness, has a purpose. Rule 604(d) ensures that constitutional claims which

arise outside the record will be first directed to the trial court when witnesses are still available and their memories are fresh. *People v. Frey*, 67 Ill. 2d 77, 84 (1977). Further, a hearing under Rule 604(d) allows a trial court to immediately correct any improper conduct or any errors of the trial court that may have produced a guilty plea. *People v. Wilk*, 124 Ill. 2d 93, 104 (1988).

¶ 12 It is undisputed that on March 3, 2009, defendant timely filed her original motion to withdraw her guilty plea. However, simply filing a motion in the clerk's office does not constitute a sufficient application. *People v. Taggart*, 268 Ill. App. 3d 84, 85 (1994). A party filing a motion has the responsibility to bring it to the court's attention, and unless the motion is brought to the attention of the trial judge and the judge is requested to rule on it, the motion is not effectively made. *People v. Kelley*, 237 Ill. App. 3d 829, 831 (1992). When no ruling has been made on a motion, the motion is presumed to have been abandoned absent circumstances indicating otherwise. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433 (2007). Here, defendant abandoned her motion by not pursuing it between March 3, 2009 and January 3, 2012, a span of nearly three years. Defendant even appeared in court approximately two weeks after filing the motion, where she vacated part of her sentence and did not mention the previously filed motion. Instead, she affirmed that she was still subject to the rest of her sentence. She has since served her sentence, as her fees were paid in July 2009 and her conditional discharge ended in January 2010. That she hired a new attorney to pursue the amended motion suggests that she knew her original motion had never been ruled upon. Under these circumstances, and in light of the emphasis in Rule 604(d) on acting promptly, we find that defendant abandoned her motion by failing to pursue it within a reasonable amount of time. See *People v. Johnson*, 159 Ill. 2d 97, 123 (1994) (the defendant abandoned his motion for substitution of judge by failing to pursue it within the almost four months between when he filed it and when his trial began); *Taggart*, 268 Ill. App. 3d at 85 (the trial court correctly denied the

defendant's motion to reduce his sentence as untimely without a hearing on the merits where the defendant did not request a hearing until almost four-and-a-half years after the motion was filed).

¶ 13 Further, even if the amended motion is construed as a new motion, the circuit court did not have jurisdiction to consider it because the motion was untimely. When a motion to vacate a guilty plea is filed beyond the time limits permitted by Rule 604(d), the trial court must refuse to hear the motion and must dismiss it for lack of jurisdiction. See *Skryd*, 241 Ill. 2d at 43. The 30-day time limit may be extended on proper application and a showing of good cause (*Frey*, 67 Ill. 2d at 84), but defendant made no such application here. As a result, the trial court did not have jurisdiction to consider the amended motion and it was properly dismissed.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 15 Affirmed.