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2013 IL App (3d) 120145-U

Order filed October 15, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellee,)	Peoria County, Illinois,
)	
v.)	Appeal No. 3-12-0145
)	Circuit No. 11-CF-617
)	
EMANUEL WELLS,)	Honorable
)	Stephen A. Kouri,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Wright and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's *pro se* document was a postplea motion, and therefore it should have been forwarded to the trial court.
- ¶ 2 Defendant, Emanuel Wells, pled guilty to unlawful possession of firearm ammunition without a Firearm Owner's Identification (FOID) card (430 ILCS 65/2(a)(1) (West 2010)). He was sentenced to 30 months' probation. After he was sentenced, defendant filed two *pro se* documents. The documents were treated as a notice of appeal by the circuit clerk and not forwarded to the trial

court. Defendant appeals, arguing that his *pro se* documents should have been forwarded to the trial court for further action below. We determine that one of defendant's documents was a postplea motion and remand the cause for further proceedings.

¶ 3

FACTS

¶ 4 Following a traffic stop, defendant was charged with unlawful possession of firearm ammunition by a felon (720 ILCS 5/24-1.1(a) (West 2010)), unlawful possession of firearm ammunition without a FOID card (430 ILCS 65/2(a)(1) (West 2010)), and unlawful possession of cannabis (720 ILCS 550/4(b) (West 2010)). Defendant pled guilty to unlawful possession of firearm ammunition without a FOID card, and the State agreed to a sentence of 30 months' probation and dropped the remaining counts. The court accepted the guilty plea, and defendant was sentenced to a 30-month term of probation.

¶ 5 After he was sentenced, the court informed defendant that he had 30 days to exercise his right to appeal. It further explained that in order to appeal, defendant would have to file a motion to withdraw the guilty plea and list all the reasons why he should be allowed to do so. Twenty-eight days after he pled guilty, defendant filed two *pro se* documents. One of the documents stated the general notice of appeal information, and the other stated the following:

¶ 6 "Notice of Appeal

1. I was charged with the offense firearm ammunition by a felon.
2. I feel like public defender did not represent me the best of his knowledge, I gave 30 months of probation. I was charged with the offense because it was my vehicle.
3. I ask my public defender my I ask the judge for a new public defender and was like he not going to, I ask my public defender to put in a motion to suppress all evidence,

Also finger print but was denied to.

4. My public defender was telling me that the judge was going give me fire year sentence by the judge or take probation.

5. All I'm asking can I get back court I fell that's was not rite."

¶ 7 The Office of the State Appellate Defender was appointed five days after defendant filed the two documents with the clerk of the circuit court. The record does not contain any proceedings in the trial court related to the two documents. Defendant appeals.

¶ 8 ANALYSIS

¶ 9 Defendant argues that his *pro se* postplea document entitled "Notice of Appeal" should have been forwarded to the trial court and either: (1) treated as a postplea motion to withdraw guilty plea, and/or (2) require an inquiry to determine whether he wanted counsel to assist him in perfecting his right to appeal. Because the issue presents a strictly legal question, our review is *de novo*. See *People v. Woodrum*, 223 Ill. 2d 286 (2006).

¶ 10 It is well settled that fundamental fairness requires that a defendant who has not waived his right to counsel receive the assistance of counsel to prepare and present a postplea motion. *People v. Cunningham*, 294 Ill. App. 3d 702 (1997). Therefore, whenever a defendant files a postplea motion that manifests an interest in appealing his judgment and sentence, the trial court is required to investigate whether the defendant desires counsel to assist in perfecting his right to appeal. *People v. Griffin*, 305 Ill. App. 3d 326 (1999). This is true even if the defendant's motion fails to comply with the requirements of Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *Id.*

¶ 11 Here, we find that defendant's document entitled "Notice of Appeal" amounted to a *pro se* postplea motion. See *People v. Trussel*, 397 Ill. App. 3d 913 (2010). The motion contained the

rudiments of an ineffective assistance of counsel claim. As such, the motion was not amenable to resolution through a ministerial act by the circuit court clerk and should have been forwarded to the trial court. See *id.* Because the motion was not forwarded to the trial court, we remand the cause so that the trial court can determine whether defendant desires the appointment of counsel to assist him in perfecting his right to appeal, and for further proceedings in accordance with Rule 604(d).

¶ 12

CONCLUSION

¶ 13 The cause is remanded to the circuit court of Peoria County with instructions.

¶ 14 Remanded with instructions.