

but failed to offer a modified limited jury instruction to limit the jury's consideration of that evidence to the witness's motivation to lie. Because of the posttrial motion still pending in the trial court, this court lacks jurisdiction to hear this appeal. We remand with directions.

¶ 4

I. BACKGROUND

¶ 5 In February 2011, the State indicted defendant, James R. Armstrong, for arson (720 ILCS 5/20-1(a) (West 2010)) for knowingly damaging Jeannie Armstrong's van by means of fire. In October 2011, defendant's jury trial commenced. (Because this court lacks jurisdiction to hear this appeal, we decline to address the evidence introduced at trial.)

¶ 6 At the close of evidence, the jury found defendant guilty of arson. In December 2011, the trial court sentenced defendant to four years' imprisonment. On December 22, 2011, defendant filed a motion for a new trial and a hearing on that motion was scheduled for January 19, 2012. On December 29, 2011, defendant filed his notice of appeal. Our review of the record indicates defendant's motion for a new trial is still pending in the trial court, as the record is devoid of any evidence further action was taken on this motion.

¶ 7

II. ANALYSIS

¶ 8 On appeal, defendant argues he received ineffective assistance of trial counsel because counsel elicited testimony from several witnesses regarding prior bad acts of defendant but failed to offer a modified limited jury instruction to limit the jury's consideration of that evidence to the witness's motivation to lie. See Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2000).

¶ 9 While neither party calls this to our attention, this court lacks jurisdiction to entertain defendant's appeal pursuant to Illinois Supreme Court Rule 303(a)(2) (eff. June 4, 2008)

because a posttrial motion is pending in the trial court.

¶ 10 Rule 303(a)(2) provides, in relevant part, as follows:

"When a timely postjudgment motion has been filed by any party, whether in a jury case or a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered." Ill. S. Ct. R. 303(a)(2) (eff. June 4, 2008).

"[W]hen there has been no disposition of a timely posttrial motion directed against the judgment, a notice of appeal does not vest the appellate court with jurisdiction." *People v. Willoughby*, 362 Ill. App. 3d 480, 482, 840 N.E.2d 803, 805 (2005).

¶ 11 In this case, defendant filed a motion for a new trial on December 22, 2012. This motion is a posttrial motion directed against the judgment. Our review of the record does not reveal any rulings made by the trial court on this motion. We note abandonment of a pending motion requires more than filing a notice of appeal before the disposition of a postjudgment motion; an affirmative indication of abandonment is necessary. See *Willoughby*, 362 Ill. App. 3d at 482, 840 N.E.2d at 804. Nothing in defendant's brief indicates an intent to abandon the motion currently pending in the trial court. Rather, it appears the fact defendant even filed a posttrial motion has been completely overlooked by both parties. While we recognize defendant filed a notice of appeal, his appeal is premature due to his pending posttrial motion in the trial court and, thus, this court lacks jurisdiction to address the merits of this case.

¶ 12 Here, defendant timely filed a motion for a new trial within 30 days of sentencing. As a result, the notice of appeal must be stricken and further proceedings had in relation to defendant's motion.

¶ 13 Accordingly, we remand the cause with directions to (1) strike the notice of appeal; (2) determine whether defendant is represented by counsel, and if defendant is indigent and desires counsel, appoint counsel to assist defendant with the preparation and presentation of the posttrial motion; and (3) hear defendant's motion.

¶ 14 III. CONCLUSION

¶ 15 For the reasons stated, we remand with directions for hearing and disposition of defendant's posttrial motion.

¶ 16 Cause remanded with directions.