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2014 IL App (3d) 130920-U

Order filed November 12, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal Nos. 3-13-0920 and 3-13-0921 Circuit Nos. 12-CF-2001 and 12-CF-719
FELICIA A. REMBLAKE,)	
Defendant-Appellant.)	Honorable Robert P. Livas, Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court lacked subject matter jurisdiction to rule on defendant's motion to reconsider sentence because it was filed more than 30 days following the imposition of her sentences. We vacate the trial court's judgment and remand this cause to the trial court with directions to dismiss these proceedings for lack of jurisdiction.

¶ 2 Defendant, Felicia A. Remblake, entered blind guilty pleas to the charges of theft (720 ILCS 5/16-1(b)(2) (West 2012)) and obstructing justice (720 ILCS 5/31-4(a) (West 2012)).

Defendant was sentenced to four years' imprisonment on each count, to be served consecutively.

Defendant appeals, arguing that her sentences were excessive. We vacate the trial court's order denying defendant's motion to reconsider sentence and remand this cause to the circuit court with directions to dismiss these proceedings for lack of jurisdiction.

¶ 3

FACTS

¶ 4

Defendant was charged with theft (720 ILCS 5/16-1(b)(2) (West 2012)) in case No. 12-CF-719. While she was out on bail for the theft charge, defendant was charged with obstructing justice (720 ILCS 5/31-4(a) (West 2012)) in case No. 12-CF-2001. Defendant entered blind pleas of guilty on both charges. On June 25, 2013, the trial court sentenced defendant to four years' imprisonment on each count, to be served consecutively. At the sentencing hearing, defendant was admonished of her right to an appeal pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001) and of the necessity of filing a written motion to reconsider sentence or withdraw plea within 30 days of sentencing before she could appeal:

"[Y]ou have got the right to appeal this sentence. Prior to appeal, you must file in this trial court a written motion asking leave to withdraw your pleas of guilty, vacate these judgments or ask me to reconsider these sentences. Those motions must be specific. They must be in writing. They must be made within 30 days of today's date, or you lose all your right to appeal."

¶ 5

On July 26, 2013—31 days after her sentences were imposed—defendant filed a motion for extension of time requesting a one-day extension to file her motion to reconsider sentence. Defendant also filed a motion to reconsider sentence on July 26, 2013, requesting that the trial court reconsider the sentences. At the hearing on defendant's motion to reconsider, the State argued that the sentences the trial court imposed were appropriate and asked the court to deny defendant's motion to reconsider. The State did not object to the motion as being untimely. The

trial court denied defendant's motion to reconsider. Defendant appealed.

¶ 6

ANALYSIS

¶ 7

The State argues that defendant's appeal should be dismissed because her motion to reconsider was untimely. Under Supreme Court Rule 604(d) (eff. Feb. 6, 2013):

"No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment."

¶ 8

Unless an extension of time is granted by the trial court prior to the expiration of the 30-day period, a Rule 604(d) motion must be filed within the 30-day period set out in the rule. *People v. Flowers*, 208 Ill. 2d 291, 300 (2003). Strict compliance with Rule 604(d) is a condition precedent to appealing a judgment on its merits. *Id.* at 308-09. In cases where a defendant has pled guilty, the trial court loses subject matter jurisdiction over a defendant's motion to reconsider sentence after 30 days if a Rule 604(d) motion has not been filed and an extension of the limitation period has not been granted by the trial court. *Id.* at 303. Lack of subject matter jurisdiction cannot be waived or cured through consent of the parties. *Id.* If a Rule 604(d) motion is not timely filed in the circuit court, the appellate court is not deprived of jurisdiction over a subsequent appeal. *Id.* at 301. However, the appellate court generally has no authority to consider the merits of an appeal. *Id.*

¶ 9

Here, defendant's Rule 604(d) motion to reconsider sentence was not timely filed, as it was not filed within 30 days of the imposition of defendant's sentences. While defendant did file a motion for extension of time on the same date as the motion to reconsider, the motion for

extension of time was not filed within the 30-day period set out by Rule 604(d). Although both motions were filed only one day late, they could not be ruled on by the trial court as it had lost subject matter jurisdiction on July 26, 2013, when the 30-day period expired without any motion being filed.

¶ 10 The revestment doctrine—which provides an exception to the general rule that a court loses jurisdiction over a cause 30 days after entry of a final judgment—does not apply in this case. For a court to be revested with jurisdiction after the 30-day period following entry of a final judgment has expired, "*both* parties must: (1) actively participate in the proceedings; (2) fail to object to the untimeliness of the late filing; *and* (3) assert positions that make the proceedings inconsistent with the merits of the prior judgment and support the setting aside of at least part of that judgment." (Emphases in original.) *People v. Bailey*, 2014 IL 115459, ¶ 25.

¶ 11 Here, in response to defendant's motion to reconsider, the State argued that defendant's sentences were appropriate and that her motion to reconsider should be denied on its merits. Since the State did not assert a position supporting the setting aside of any part of the judgment, the trial court was not revested with jurisdiction to hear the merits of defendant's motion to reconsider.

¶ 12 Because the trial court did not have jurisdiction to rule on defendant's motion to reconsider sentence, its order denying the motion to reconsider is void and we do not have authority to consider the merits of defendant's appeal. Therefore, we vacate the trial court's order and remand this cause to the trial court with directions to dismiss these proceedings for lack of jurisdiction. See *Bailey*, 2014 IL 115459, ¶¶ 28, 29.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Will County is vacated, and the cause is remanded to

the circuit court with directions to dismiss the proceedings for lack of jurisdiction.

¶ 15 Judgment vacated; cause remanded with directions.