

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).

2014 IL App (4th) 121121-U

NO. 4-12-1121

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
May 8, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Mason County
STANLEY SISK, JR.,	)	No. 07CF59
Defendant-Appellant.	)	
	)	Honorable
	)	Diane M. Lagoski,
	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Pope and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court lacks jurisdiction to consider the merits of defendant's appeal where a postjudgment motion remains pending in the trial court.

¶ 2 Pursuant to a September 2007 fully negotiated plea agreement, defendant, Stanley Sisk, Jr., was sentenced to seven years' imprisonment for criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2006)) to run consecutively to concurrent four-year prison terms for indecent solicitation of a child (720 ILCS 5/11-6(a) (West 2006)) and aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2006)).

¶ 3 In September 2012, defendant filed a *pro se* postconviction petition. On November 8, 2012, the trial court dismissed defendant's postconviction petition at the first stage. Defendant timely filed a motion for reconsideration of the dismissal of his petition. Our review of the record indicates defendant's motion for reconsideration is still pending in the trial court.

¶ 4 On appeal, defendant asserts, in the alternative, (1) the trial court erred in summarily dismissing his postconviction petition where he stated the gist of a constitutional claim; or (2) we lack jurisdiction and remand is appropriate so the trial court may rule on his motion for reconsideration.

¶ 5 Because defendant's postjudgment motion is still pending in the trial court—a fact both parties acknowledge—this court lacks jurisdiction to hear this appeal.

¶ 6 I. BACKGROUND

¶ 7 In September 2007, pursuant to a fully negotiated plea agreement, defendant pleaded guilty to (1) indecent solicitation of a child (count I) (720 ILCS 5/11-6(a) (West 2006)); (2) criminal sexual assault (count II) (720 ILCS 5/12-13(a)(1) (West 2006)); and (3) aggravated criminal sexual abuse (count III) (720 ILCS 5/12-16(d) (West 2006)). In exchange for his guilty plea, the State dismissed one count of criminal sexual assault (count IV) (720 ILCS 5/12-13(a)(4) (West 2006)) and a misdemeanor offense of sexual exploitation of a child (720 ILCS 5/11-9.1 (West 2006)). Pursuant to the agreement, defendant was sentenced to 7 years' imprisonment for count II to run consecutively to concurrent 4-year prison terms for counts I and III, for a total sentence of 11 years' imprisonment.

¶ 8 Prior to accepting defendant's guilty plea, the trial court admonished him that a two-year mandatory supervised release (MSR) term attached to each count to which he was pleading guilty. After accepting the plea, the court elaborated on the terms of the MSR, noting it believed the total MSR term would be four years, *i.e.*, two years for count II and two years for counts I and III, but it might only be a total of two years. Defendant took no direct appeal.

¶ 9 In September 2012, defendant filed a *pro se* petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2012)), asserting the trial court erred by

admonishing him he would serve a two-year MSR term because the statute mandates a MSR term of three years to life and, thus, he did not receive the benefit of his bargain. On November 8, 2012, the trial court dismissed defendant's postconviction petition without a hearing. On November 19, 2012, defendant filed a motion for reconsideration of the first-stage dismissal of his postconviction petition, asserting, in part, his (1) plea agreement was void because he was not properly admonished regarding the applicable MSR term and (2) trial counsel was ineffective for failing to explain the possible MSR term.

¶ 10 In December 2012, defendant filed a notice of appeal from the dismissal of his postconviction petition and noted the pendency of the motion for reconsideration.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant asserts, in the alternative, (1) the trial court erred in summarily dismissing his postconviction petition where he stated the gist of a constitutional claim; or (2) we lack jurisdiction and remand is appropriate so the trial court may rule on his motion for reconsideration. The State concedes (1) this appeal is premature due to the pending motion in the trial court and (2) if this court has jurisdiction, the first-stage dismissal of defendant's *pro se* postconviction petition was error.

¶ 13 As both parties acknowledge, this court lacks jurisdiction to entertain defendant's appeal pursuant to Illinois Supreme Court Rule 606(b) (eff. Mar. 20, 2009) because defendant's motion for reconsideration of the first-stage dismissal of his postconviction petition is still pending in the trial court. Rule 606(b) provides, in relevant part, as follows:

"When a timely posttrial or postsentencing motion directed against the judgment has been filed by counsel or by defendant, if not represented by counsel, any notice of appeal filed before the entry

of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court." Ill. S. Ct. R. 606(b) (eff. Mar. 20, 2009).

"[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).

¶ 14 In this case, defendant filed a motion for reconsideration of the dismissal of his postconviction petition on November 19, 2012. The motion for reconsideration is a postjudgment motion. Our review of the record does not reveal any ruling has been made by the trial court on this motion. Accordingly, this court lacks jurisdiction to consider defendant's appeal.

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we dismiss the appeal for want of jurisdiction.

¶ 17 Appeal dismissed.