

FIFTH DIVISION  
June 5, 2015

No. 1-13-2676

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 11808
	)	
OLLADIPUPO MAKINDE,	)	Honorable
	)	Mary Margaret Brosnahan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE McBRIDE delivered the judgment of the court.  
Justices Gordon and Reyes concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Where defendant, within 30 days of being sentenced on his guilty plea, filed a *pro se* "Notice of Appeal Filled [*sic*]," there was no error in characterizing the document as a notice of appeal. Because defendant failed to file a motion to withdraw his guilty plea prior to appealing, the appeal is dismissed.

¶ 2 Defendant Olladipupo Makinde pleaded guilty to aggravated driving under the influence of alcohol and was sentenced to three years in prison. Fifteen days later, defendant filed a *pro se* document titled "Notice of Appeal Filled [*sic*]" in the circuit court. The clerk of the circuit court treated the document as a notice of appeal and the trial court appointed the Office of the State

Appellate Defender. On appeal, defendant contends that the document he filed should not have been characterized as a notice of appeal, but rather, as a communication manifesting his desire to perfect an appeal, his confusion as to the proper procedures to follow, and his desire for the assistance of counsel. Defendant asserts that the case must be remanded with directions for the appointment of counsel and further proceedings pursuant to Supreme Court Rule 604(d) (eff. Dec. 11, 2014).

¶ 3 For the reasons that follow, we dismiss defendant's appeal.

¶ 4 On July 24, 2013, defendant pleaded guilty to aggravated driving under the influence of alcohol in exchange for a sentence of three years in prison. After accepting the plea, the trial court advised defendant of his appeal rights pursuant to Supreme Court Rule 605(c) (eff. Oct. 1, 2001) (appeal rights for a negotiated guilty plea). Specifically, the trial court admonished defendant as follows:

"You have the right to appeal. If you want to appeal, you must file in the trial court within 30 days of today's date a written motion asking that the judgment be vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion.

If the motion were allowed, the plea of guilty, sentence, and judgment would be vacated, and a trial date would be set on the charges to which the plea of guilty was made.

Upon the request of the State, any charges that were dismissed as part of the plea agreement would be reinstated and also set down for trial.

If you could not afford it, a copy of [the] transcript of proceedings at the time of your plea and sentence will be provided without cost to you and a lawyer will be appointed to help you prepare the motion.

Lastly, any appeal taken from the judgment and plea of guilty, any issue or claim of error not raised in the motion to vacate the judgment and to withdraw the plea of guilty would be deemed waived. All right. Good luck to you, sir."

¶ 5 Fifteen days later, defendant filed a *pro se* document titled "Notice of Appeal Filled [sic]." The document stated as follows:

"I defendant, Olladipupo Makinde will be putting in my appeal on this case with the Circuit Court. I have been assigned a public defendant [sic] by the name Sara Spivy of the Office of the Cook County Public Defendant [sic]. But due to my lack of communication and my situation here at Stateville Correctional Center (N.R.C.) it's not understanding to me on how to go about this. I took my time on 07-24-2013 and I was informed at that time that I had 30 days from then to fill [sic] my appeal. Like I said, it's unclear to me on how to go about this, but I will like to make a note that I will like to put in my appeal base [sic] on (1) excessive time (2) class of felony, should be a Class 4, not a Class 2 (3) my lack of not been able to go to law library in here in Stateville Correctional Center (N.R.C.) since we are locked down 24/7 and I've been here, never shipped on to my parent institute since I first took time on my first case on the 15th of February 2013. Therefore I pray that this with the contact with my lawyer Sara will serve my appearance of my appeal."

¶ 6 The Clerk of the Circuit Court filed defendant's *pro se* submission as a notice of appeal. The trial court thereafter appointed the Office of the State Appellate Defender to represent defendant on appeal.

¶ 7 Under Supreme Court Rule 604(d) (eff. July 1, 2006), before a defendant can appeal a judgment entered on a negotiated guilty plea, he must, within 30 days of the date upon which the sentence was imposed, file in the circuit court a motion to withdraw the guilty plea and vacate the judgment. Our supreme court has held that the filing of a Rule 604(d) motion is a condition precedent to an appeal from the circuit court's judgment on a guilty plea. *People v. Flowers*, 208 Ill. 2d 291, 300-01 (2003). The failure to file a Rule 604(d) motion precludes this court from considering a defendant's appeal on the merits, and the appeal must be dismissed. *Flowers*, 208 Ill. 2d at 301.

¶ 8 In the instant case, we find that defendant failed to comply with the requirements of Rule 604(d) because instead of filing a motion to withdraw his guilty plea and vacate the judgment, he filed a *pro se* notice of appeal. Accordingly, his appeal must be dismissed. *Flowers*, 208 Ill. 2d at 301.

¶ 9 Anticipating our determination, defendant contends that his *pro se* filing was not a notice of appeal, but rather, a document manifesting his desire to perfect an appeal, his confusion as to the proper procedures to follow, and his desire for the assistance of counsel. Defendant argues that the circuit court clerk should not have filed the document as a notice of appeal, but rather, should have forwarded it to the trial court, which in turn should have appointed counsel to assist him in perfecting his appeal. Defendant asserts that his case must be remanded with directions

for the appointment of counsel and further proceedings pursuant to Rule 604(d) (eff. Dec. 11, 2014).

¶ 10 We cannot agree with defendant's argument that his document was not intended to be a notice of appeal. First, defendant titled his filing "Notice of Appeal Filled [*sic*]." Second, defendant stated in the document that he was "putting in my appeal," would like to "put in my appeal," and prayed that "this" would "serve my appearance of my appeal." Third, defendant listed the issues he wanted to raise on appeal, none of which was an allegation attacking the voluntariness of his plea. Finally, defendant indicated in the document that he was represented by counsel. Nothing in the document demonstrates that defendant wanted to withdraw his guilty plea and have postplea counsel appointed, but then mistakenly labeled the document as a notice of appeal. Instead, the plain language of the document indicates that defendant simply wanted to appeal the circuit court's judgment.

¶ 11 Our view is not altered by defendant's citation to *People v. Griffin*, 305 Ill. App. 3d 326, 330-31 (1999) and *People v. Trussel*, 397 Ill. App. 3d 913, 914-15 (2010).<sup>1</sup>

¶ 12 In *Griffin*, the defendant received his sentence two months after he waived his right to counsel and entered his guilty plea. *Griffin*, 305 Ill. App. 3d at 329. After the trial court admonished the defendant pursuant to Rule 605(b), the defendant asked in open court whether a motion to vacate the sentence was required to perfect an appeal and inquired whether an attorney could be appointed to represent him in his appeal. *Id.* The trial court responded that the defendant

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<sup>1</sup> We note that in his opening brief, defendant also relied upon *People v. Brooks*, 377 Ill. App. 3d 836, 840-41 (2007). However, after the State pointed out in its brief that upon further review, our supreme court rejected the appellate court's reasoning (*People v. Brooks*, 233 Ill. 2d 146, 155-56 (2009)), defendant concluded in his reply brief that *Brooks* is inapplicable.

was entitled to an attorney, but declined to advise him further, noting that to do so would be to act as defendant's attorney. *Id.* The defendant failed to file a postplea motion or a timely notice of appeal, but this court granted him leave to file a late notice of appeal. *Id.* at 328.

¶ 13 On appeal, the defendant contended that Rule 604(d) required the trial court to ask him whether he desired the assistance of counsel for preparation of postplea motions because he manifested an interest in appealing. *Id.* at 330. This court held that a trial court is required to investigate whether an indigent, *pro se* defendant desires counsel whenever he manifests an interest in appealing from a judgment entered upon a guilty plea, even if he does not file a written postplea motion. *Id.* at 331, 332. The *Griffin* court remanded for appointment of counsel and the preparation and presentation of any available postplea motions. *Id.* at 332.

¶ 14 In contrast to *Griffin*, here, defendant did not request clarification of the requirements of Rule 604(d). In addition, defendant indicated in his filing that an attorney had been appointed for him. Accordingly, unlike *Griffin*, nothing triggered the circuit court's duty to inquire whether defendant desired the assistance of counsel for preparation of a postplea motion.

¶ 15 In *Trussel*, the defendant, 22 days after pleading guilty and being sentenced, sent a *pro se* letter to the trial court stating that he wished to appeal, that his lawyer scared him into taking a plea, and that he was not guilty. *Trussel*, 397 Ill. App. 3d at 913-14. The circuit court clerk treated the letter as a notice of appeal. *Id.* at 914. On appeal, the defendant contended that the document should have been forwarded to a judge, who could have appointed counsel for the purpose of assisting the defendant in perfecting his right to direct appeal. *Id.* The defendant further asserted that because he manifested an interest in appealing, the trial court was required to investigate whether he desired counsel to assist in preparation of such a motion. *Id.* at 915.

This court agreed with the defendant and remanded the cause with directions to strike the notice of appeal, appoint counsel, and proceed in accordance with Rule 604(d). *Id.*

¶ 16 The instant case is distinguishable from *Trussel*. While the defendant in *Trussel* sent a letter to the circuit court, here, defendant sent a document labeled "Notice of Appeal Filled [sic]." Moreover, the defendant in *Trussel* indicated in his letter that his lawyer had scared him into taking a plea even though he was not guilty. Here, defendant has made no such allegation that his plea was involuntary or that he is not guilty of the crime of which he was convicted. Therefore, *Trussel* is not persuasive.

¶ 17 For the reasons explained above, we find that the circuit court clerk and circuit court did not err when they treated defendant's *pro se* "Notice of Appeal Filled [sic]" just as it was labeled. Defendant failed to file a motion to withdraw his guilty plea prior to filing an appeal. Accordingly, his appeal must be dismissed.

¶ 18 Appeal dismissed.