

No. 1-13-3519

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 20750
)	
KEVIN MASON,)	Honorable
)	Catherine M. Haberkorn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LIU delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

O R D E R

¶ 1 **Held:** Appeal dismissed for lack of jurisdiction where orders appealed from were not final and appealable.

¶ 2 Defendant Kevin Mason appeals from orders of the circuit court of Cook County, denying his *pro se* motions for trial transcripts and the common law record, and the appointment of counsel. He contends that the circuit court abused its discretion in classifying his post-trial

motions as petitions for relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)), effectively prohibiting him from filing a viable post-conviction petition.

¶ 3 The record shows that on January 26, 2012, defendant entered a negotiated plea of guilty to the offense of armed habitual criminal and was sentenced to six years' imprisonment.

Defendant did not file a motion to withdraw his plea or otherwise perfect an appeal from the judgment entered thereon.

¶ 4 On September 19, 2012, defendant filed a *pro se* motion to reconsider sentence, alleging that he received ineffective assistance of counsel which denied him due process and equal protection. He maintained that counsel misadvised him regarding his sentence, and that the full effect of mitigation and rehabilitative potential were not considered in the sentence imposed. No ruling was entered on this motion.

¶ 5 The memorandum of orders indicates that on December 3, 2012, defendant requested transcripts. The court allowed the request, and noted that the January 26, 2012, order is to "stand."

¶ 6 On January 31, 2013, defendant filed a *pro se* motion for appointment of counsel, claiming that appointed counsel would allow him the ability to adequately amend his motion to reconsider sentence and/or to file additional motions seeking relief. On February 15, 2013, the circuit court denied defendant's motion, and included in the notification to him, that his request for an attorney is not attached to any allegation and there were no supporting affidavits.

¶ 7 On March 15, 2013, defendant filed a *pro se* motion for trial transcripts and the common law record, to which he attached his own affidavit, repeating his request for trial transcripts and the common law record. The court denied defendant's motion on May 24, 2013. In its oral pronouncement, the court stated that this is defendant's "second PC *pro se* request," but noted that defendant has not stated the relief he is seeking, and has only submitted an affidavit requesting an attorney. The court also noted that defendant had not alleged any rights that have been violated or provided supporting affidavits for violation of any rights, and related these same observations to defendant in notifying him of its decision. In the memorandum order, the court noted that this was a "PC – Pro Se Request."

¶ 8 This court subsequently granted defendant's motion for leave to file a late notice of appeal from that order, and in his brief, defendant contends that the circuit court abused its discretion in classifying his *pro se* motions for appointment of counsel and trial transcripts and common law record as post-conviction petitions. He further asserts that the court failed to properly notify him of the recharacterization pursuant to *People v. Shellstrom*, 216 Ill. 2d 45, 57 (2005). The State responds that the orders appealed from are not final and appealable, and therefore, this court has no jurisdiction to consider his appeal. Defendant replies that the circuit court's recharacterization of his motions as post-conviction petitions renders the dismissal orders final and appealable because a successive post-conviction petition cannot now be filed without leave of court.

¶ 9 An order is final for appeal purposes if it determines the litigation on the merits or some definite part thereof, so that, if affirmed, the only thing remaining is to proceed with execution of the judgment. *People v. Salgado*, 353 Ill. App. 3d 101, 106 (2004). Here, the court observed that defendant had not stated the relief he was seeking or alleged the violation of any rights. Rather, he was just requesting the record and submitted an affidavit requesting an attorney.

¶ 10 Since defendant filed his requests more than 30 days after he entered his guilty plea, the only continuing power of the court was to enforce the ruling it entered on January 26, 2012, or clarify any procedural matters that are not present here. *People v. Flowers*, 208 Ill. 2d 291, 307 (2003). The time for a direct appeal from his guilty plea had expired, and in his subsequent motions, defendant failed to assert a violation of a statutory law or deprivation of a constitutional right. Thus, defendant presented no basis for granting his motions for trial transcripts and appointment of counsel, and the circuit court acted within its discretion in denying his requests. *Salgado*, 353 Ill. App. 3d at 105-06.

¶ 11 Defendant argues, however, that the requests he filed were recharacterized by the court as post-conviction petitions. As evidence, defendant cites the notation in the memorandum order that defendant's "PC Pro Se Request" is denied, the notice to him that his "Post Conviction Pro Se request" is denied, and the court's oral pronouncement that it was denying defendant's "second PC pro se request."

¶ 12 We find that defendant places too much weight on these notations. See *People v. Thompson*, 377 Ill. App. 3d 945, 948 (2007). There is no indication in the record that the court

denied the petitions under the Act; nor that it intended the meaning defendant attempts to attach to the motions to bring them within the ambit of the Act. *Thompson*, 377 Ill. App. 3d at 948. To the contrary, the court continually noted and advised defendant that he had not raised a claim or alleged any violation of rights, and remarked that he had only requested trial transcripts and appointment of counsel. Given these facts, it is clear that defendant was not entitled to transcripts or appointment of counsel either as a matter of right as a direct appellant, or, pursuant to the circuit court's discretion, as a post-conviction petitioner. *Salgado*, 353 Ill. App. 3d at 106.

¶ 13 It is also evident that where his motions constituted random requests for transcripts and the appointment of counsel without any pending litigation in the circuit court, there is no basis for this appeal. *Salgado*, 353 Ill. App. 3d at 106. The orders appealed from are not among the interlocutory orders specified in Rule 307. Ill. S. Ct. R. 307 (eff. Feb. 26, 2010), nor did they terminate any pending litigation. *Salgado*, 353 Ill. App. 3d at 107. Thus, the orders denying defendant's requests for free transcripts and appointment of counsel are not appealable under the facts of this case, and we must dismiss defendant's appeal for lack of jurisdiction. *Salgado*, 353 Ill. App. 3d at 107.

¶ 14 Defendant contends that *Salgado* is "not on point" because the defendant in that case had previously filed a post-conviction petition. In *Salgado*, 353 Ill. App. 3d at 101-02, defendant filed a post-conviction petition which was summarily dismissed, then filed a motion for free transcripts and common law record, and appealed from the order denying the motion for free transcripts. As noted, this court dismissed the case for lack of jurisdiction where the denial of

defendant's request for transcripts was not a final and appealable order. *Salgado*, 353 Ill. App. 3d at 107. The fact that defendant in *Salgado* had previously filed a post-conviction petition was not dispositive or controlling, nor does that fact distinguish it from the case at bar. Rather, in both cases, there was no pending litigation which was terminated by the court's orders, and thus, the orders disposing of them were not final and appealable.

¶ 15 Accordingly, we dismiss this appeal for lack of jurisdiction.

¶ 16 Appeal dismissed.