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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 09 CR 18282
)	
LUTHER SPENCER,)	The Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court lacked jurisdiction to consider the merits of defendant's *pro se* motion to withdraw his guilty plea and vacate sentence when the limited purpose of our remand did not encompass such action.

¶ 2 Following our limited remand, the circuit court held a hearing for the filing of a Supreme Court Rule 604(d) (eff. Feb. 6, 2013) certificate by appointed counsel, and for Supreme Court Rule 605(b) (eff. Oct. 1, 2001) admonishments. After the conclusion of those two matters, defendant Luther Spencer "fired" his court-appointed counsel and filed a *pro se* motion to

withdraw his blind plea of guilty to felony theft of property less than \$300 and vacate his sentence, which the circuit court denied. On appeal, defendant contends that the circuit court erred when it allowed him to represent himself at the hearing on his motion to withdraw¹ his guilty plea and vacate his sentence without any discussion regarding the consequences of waiving counsel, as required under Supreme Court Rule 401(a) (eff. July 1, 1984).

¶ 3

BACKGROUND

¶ 4

A detailed recitation of the facts of this case is set forth in our Supreme Court Rule 23 (eff. July 1, 2011) order disposing of defendant's direct appeal. *People v. Spencer*, 2013 IL App (1st) 110181-U. Briefly stated, the circumstances leading to defendant's arrest occurred on September 24, 2009, when 80-year-old Anthony Malhous had his wallet stolen while riding a city bus in which defendant was also a passenger. A public defender was appointed to represent defendant on October 22, 2009, and following a plea conference on January 5, 2010, defendant chose to proceed to trial. Defendant, however, interrupted the subsequent trial proceedings and entered a blind plea of guilty to felony theft of property less than \$300. Before sentencing and despite being represented by counsel, defendant filed several *pro se* postplea motions, including a motion to withdraw his guilty plea, which the trial court denied after questioning defendant and his court-appointed counsel. On December 29, 2010, the trial court sentenced defendant to nine-and-a-half years' imprisonment, and defense counsel filed a motion to reconsider sentence, which the trial court denied.

¶ 5

Defendant timely appealed the denial of his motion to reconsider sentence, and we remanded the cause to the circuit court for the limited purpose of: "(1) the filing of a Rule

¹ In his brief, defendant refers to his *pro se* "motion to vacate his guilty plea," which we understand to reference his *pro se* motion to withdraw his guilty plea and vacate sentence that appears in the common law record.

604(d) certificate; (2) the opportunity to file a new motion to reconsider the sentence should counsel deem a new motion necessary; and (3) a new motion hearing if necessary" (*Spencer*, 2013 IL App (1st) 110181-U, ¶ 26), and for proper Rule 605(b) admonishments" (*Spencer*, 2013 IL App (1st) 110181-U, ¶ 33). In doing so, we noted that the underlying motion to reconsider sentence was the only postsentencing motion ever filed because "[a]lthough defendant had sought to withdraw his plea prior to sentencing, his motion was never renewed following sentencing as required by Rule 604(d)." *Spencer*, 2013 IL App (1st) 110181-U, ¶ 27.

¶ 6 Upon remand, on May 23, 2013, a public defender was appointed to represent defendant. On July 23, 2013, appointed counsel filed a certificate of compliance with Supreme Court Rule 604(d), and a written motion to reconsider sentence, which the circuit court denied following a hearing that same date. The circuit court then admonished defendant pursuant to Supreme Court Rule 605(b). Therefore, on July 23, 2013, the specific directions in our remand order were satisfied.

¶ 7 However, on November 13, 2013, at the request of defendant, the circuit court vacated the appointment of the public defender as counsel to defendant. The court also noted that defendant was present, a Rule 604(d) motion to reconsider sentence was previously filed by defense counsel, and defendant was admonished of his rights under Rule 605(b). Then, the circuit court allowed defendant, who was no longer represented by the public defender, to file and argue his *pro se* motion to withdraw his guilty plea and vacate sentence. The circuit court denied defendant's *pro se* motion, finding there "was no legal basis to withdraw this plea of guilty. I don't believe by the Appellate Court mandate that I even had to give you the opportunity to file this motion again, but I allowed you to do so."

¶ 8 This appeal follows.

¶ 9

ANALYSIS

¶ 10

We initially note that defendant has completely discharged the extended-term sentence of nine-and-a-half years' imprisonment that was imposed in this case.² We also observe that "while the completion of a defendant's sentence renders moot a challenge to the sentence, it does not so render a challenge to the conviction" because "the nullification of a conviction may hold important consequences for a defendant." *People v. Campbell*, 224 Ill. 2d 80, 83-84 (2006). Because defendant's claim, here, calls into question the validity of his conviction, it is not moot. *Campbell*, 224 Ill. 2d at 84.

¶ 11

Before proceeding to the merits of defendant's appeal, however, we must resolve the State's threshold contention that the circuit court lacked jurisdiction to hear defendant's motion to withdraw his guilty plea and vacate sentence. Among the grounds offered, we are persuaded by the State's argument that the scope of our remand was limited to defendant filing a Rule 604(d) certificate and receiving Rule 605(b) admonishments.

¶ 12

In his reply brief, defendant claims that when we reversed the circuit court's denial of his postplea motion to reconsider sentence, he "was given another opportunity to perfect his appellate rights via a motion to vacate his guilty plea and/or a motion to reconsider the sentence following proper Rule 605(b) admonitions." However, we observe the rule that "when a reviewing court issues a mandate, it vests the trial court with jurisdiction to take only such action as conforms to that mandate," and any other order entered by the circuit court "is outside the scope of its authority and void for lack of jurisdiction." *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276-77 (1982). The mandate of a reviewing court is " 'the transmittal of the judgment of

² According to the State Appellate Defender's brief and memorandum in support of its motion to withdraw as counsel, "[o]n June 17, 2014, [defendant] was released from prison." The inmate status sheet attached to the supporting brief and memorandum reflect a parole date of "06/17/2014" and a projected discharge date of "06/17/2015."

that court to the circuit court, and reverts the circuit court with jurisdiction.' " *Ertl v. City of De Kalb*, 2013 IL App (2d) 110199, ¶ 21 (quoting *PSL Realty Co. v. Granite Investment Co.*, 86 Ill. 2d 291, 304 (1981)).

¶ 13 Where, as here, the *mandate*³ does not contain specific directions, the circuit court was required to examine the reviewing court's opinion or order " 'and to proceed in conformity with the views expressed in it.' " *Ertl*, 2013 IL App (2d) 110199, ¶ 21 (quoting *PSL Realty Co.*, 86 Ill. 2d at 308). Our remand *order* contained specific directions, none of which included "another opportunity to perfect his appeal rights via a motion to [withdraw] his guilty plea [and vacate sentence]."

¶ 14 Once the public defender, who was appointed to represent defendant on remand, filed a certificate of compliance with Supreme Court Rule 604(d) and a written motion to reconsider sentence, and the circuit court admonished defendant pursuant to Rule 605(b), the specific directions in our remand order were, as the public defender stated, "completed here [and] [w]e can file the notice of appeal and have you sign it at any time." That our remand order allowed defendant another opportunity to pursue a "motion to [withdraw] his guilty plea [and vacate sentence]" is directly refuted by the plain language of our remand order. As we noted in our remand order, the motion to reconsider sentence was the only motion filed after sentencing. *Spencer*, 2013 IL App (1st) 110181-U, ¶ 27. We further noted that "[n]o motion challenging the underlying plea or an accompanying 604(d) certificate was ever filed after defendant's sentence was imposed. Although defendant had sought to withdraw his plea prior to sentencing, his motion was never renewed following sentencing as required by Rule 604(d)." *Spencer*, 2013 IL App (1st) 110181-U, ¶ 27 (citing, *inter alia*, *People v. Marquez*, 2012 IL App (2d) 110475, ¶

³ The mandate stated: "On the Seventh day of February, 2013, the Appellate Court, First District, issued the following judgment" in *People v. Luther Spencer*, No. 1-11-0181.

14); see also *People v. Gabrys*, 2013 IL App (3d) 110912, ¶ 27 (citing *Marquez* with approval and noting, "The first motion [to withdraw the guilty plea] was filed prior to sentencing, which is a procedure that does not comply with Rule 604(d) and does not create a right to appeal from the judgment."). Because defendant failed to renew his motion to withdraw his guilty plea after sentencing and to obtain a ruling, he failed to preserve the right to appeal therefrom. *Spencer*, 2013 IL App (1st) 110181-U, ¶ 27. It was defendant's timely appeal from the denial of his motion to reconsider sentence, and not the unpreserved denial of his motion to withdraw his guilty plea, that precipitated our remand order. In this appeal, defendant does not challenge the circuit court's compliance with the specific directions in our remand order. *Cf. Ertl*, 2013 IL App (2d) 110199, ¶ 21 ("When a reviewing court reverses and remands a cause with a specific *mandate*, the only proper issue on a second appeal is whether the trial court's order is in accord with the mandate." (Emphasis added.)); *People v. Golen*, 2015 IL App (1st) 133433, ¶¶ 5-6, 13, 29 (using "mandate" interchangeably with "opinion" or "order"). Rather, he solely challenges the propriety of the circuit court's consideration of his *pro se* motion to withdraw his guilty plea and vacate sentence. See *Golen*, 2015 IL App (1st) 133433, ¶ 30 (the defendant sought to withdraw his guilty plea on postconviction review even though he never filed a timely motion to withdraw his guilty plea).

¶ 15 However, the circuit court was vested with jurisdiction to take only such action as conforms to our specific instructions on remand, and the circuit court's consideration and denial of defendant's *pro se* motion to withdraw his guilty plea and vacate sentence exceeded the scope of its authority and was void for lack of jurisdiction. *Schreier*, 92 Ill. 2d at 276-77. While we note the circuit court's protracted efforts to accommodate defendant's *pro se* motion to withdraw his guilty plea and vacate sentence, the circuit court had no authority to act beyond the dictates of

our remand order. *Golen*, 2015 IL App (1st) 133433, ¶ 13. Because the circuit court lacked jurisdiction to consider defendant's *pro se* motion to withdraw his guilty plea and vacate sentence, its denial on the merits of the motion was void; under these circumstances, we vacate the circuit court's denial of defendant's motion and order that defendant's motion be dismissed. *People v. Bailey*, 2014 IL 115459, ¶¶ 28-29. Moreover, where the circuit court had no authority to address defendant's *pro se* motion to withdraw his guilty plea and vacate sentence, this court, in turn, has no authority to consider the merits of defendant's appeal of the judgment denying his motion. See *Kyles v. Maryville Academy*, 359 Ill. App. 3d 423, 431-32 (2005) ("The lack of jurisdiction in the circuit court, in turn, affects our own jurisdiction in that we are then limited to considering only the lack of jurisdiction below, and we may not consider the substantive merit of the circuit court's unauthorized actions.").

¶ 16 In reaching our conclusion, we note the following misstatements of fact. First, the statement of facts contained in defendant's appellate brief states that "on July 29, 2013, Spencer filed a *pro se* motion to vacate his guilty plea, which is the subject of the instant appeal," citing pages 11 to 13 of the common law record. The memorandum of orders, or "half sheet," included in the common law record contains an August 27, 2013, entry that a "Mot to W/D PG" was continued by agreement to "9/13/13" for status. However, the report of proceedings for August 27, 2013, contains appointed counsel's statement to the circuit court, "Correct Judge. We did file, on Mr. Spencer's behalf, a motion to withdraw his guilty plea." Appointed counsel's statement on the record refutes defendant's statement in his reply brief that "[o]n July 29, 2013, when Spencer filed his *pro se* motion to vacate his guilty plea, Spencer was no longer represented by counsel." Rather, the record shows that defendant was represented by appointed counsel until November 13, 2013, when the circuit court vacated the appointment of the public

defender as counsel to defendant. Moreover, we acknowledge that defendant's *pro se* motion to withdraw his guilty plea and vacate sentence was stamped "FILED CRIMINAL APPEALS JUL 29 2013 DOROTHY BROWN CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL," but we observe that the circuit court did not allow defendant leave to file his *pro se* motion until November 13, 2013, after the circuit court vacated the appointment of the public defender. The court need not consider defendant's *pro se* motions while he is represented by competent counsel. *People v. Haywood*, 2016 IL App (1st) 133201, ¶ 24. Thus, as clearly indicated in the report of proceedings, the circuit court allowed defendant to file and argue his *pro se* motion to withdraw his guilty plea and vacate sentence on November 13, 2013, not earlier. Notwithstanding, the circuit court lacked jurisdiction to entertain defendant's *pro se* motion to withdraw his guilty plea and vacate sentence.

¶ 17

CONCLUSION

¶ 18

For the reasons stated, we vacate the judgment of the circuit court denying defendant's *pro se* motion to withdraw his guilty plea and vacate sentence and order that defendant's motion be dismissed. Defendant's conviction and sentence for felony theft of property less than \$300, therefore, stands.

¶ 19

Judgment vacated; motion dismissed.