

No. 1-14-0607

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.)	Nos. 13 CR 7892
)	13 CR 8115
)	13 CR 8116
)	
MICHAEL PANZICA,)	Honorable
)	Bridget Jane Hughes,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 **Held:** Defendant’s appeal from the judgment entered on his pleas of guilty dismissed for his failure to file the requisite post-plea motion pursuant to Illinois Supreme Court Rule 604(d).

¶ 2 Defendant Michael Panzica entered negotiated pleas of guilty to separately filed charges of aggravated arson (13 CR 7892, 13 CR 8115) and attempted aggravated arson (13 CR 8116). He was then sentenced to 15 years’ imprisonment on each count, and the trial court ordered the sentences to run concurrently. The trial court also entered three separate, but identical, orders

assessing defendant \$1,139 in fines, fees, and costs. On appeal, defendant solely disputes the propriety of these orders.

¶ 3 The record shows that defendant entered his pleas to the three offenses on February 3, 2014. Although properly admonished by the trial court (Ill. S. Ct. Rule 605(c) (eff. Oct. 1, 2001)), defendant did not file a motion to withdraw his pleas (Ill. S. Ct. Rule 604(d) (eff. Dec. 11, 2014)). Instead, he filed a notice of appeal solely contesting the propriety of certain fines and fees assessed against him, and the imposition of duplicate fees. In response, the State concedes all but the \$2 public defender records automation fees and the \$2 State's Attorney records automation fees. Neither party, however, addresses the procedural requisites when appealing a judgment entered on a plea of guilty.

¶ 4 Supreme Court Rule 604(d) provides, in pertinent part, that no appeal shall be taken upon a negotiated plea of guilty unless defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. The supreme court has made it clear that its rules are not mere suggestions, but rather have the force of law and enjoy the presumption that they will be obeyed and enforced as written. *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 39 (2011).

¶ 5 “Rule 604(d) establishes a condition precedent for an appeal from a defendant's plea of guilty” (*People v. Wilk*, 124 Ill. 2d 93, 105 (1988)), and as a general rule, the failure to file a timely motion under Rule 604(d) precludes the appellate court from considering the appeal on the merits (*People v. Merriweather*, 2013 IL App (1st) 113789, ¶ 14 (citing *Skryd*, 241 Ill. 2d at 40)). When a defendant has failed to file a written motion to withdraw his guilty plea and vacate judgment, the appellate court must dismiss the appeal. *People v. Flowers*, 208 Ill. 2d 291, 301

(2003). Furthermore, a voluntary guilty plea waives all nonjurisdictional defenses or defects. *People v. Horton*, 143 Ill. 2d 11, 22 (1991).

¶ 6 In apparent recognition of his failure to comply with the motion requirement, defendant maintains that fines and fees not authorized by statute are void, and may be challenged at any time, citing *People v. Leach*, 2011 IL App (1st) 090339, ¶ 37. We note, however, that since the parties filed their briefs in this case, the supreme court abolished the void sentence rule of *People v. Arna*, 168 Ill. 2d 107 (1995) in *People v. Castleberry*, 2015 IL 116916, ¶ 19, and thus, defendant's voidness argument fails to provide a basis for our consideration of his appeal on the merits.

¶ 7 Moreover, in the pre-*Castleberry* case of *People v. Collins*, 328 Ill. App. 3d 366, 370 (2002), which is analogous in some respects to the case at bar, the reviewing court found that defendant had waived his right to appeal by failing to comply with the Rule 604(d) motion requirement. In addition, the court in *Collins* rejected defendant's argument, raised for the first time on appeal, that the fines assessed by the trial court must be vacated. *Id.* at 372. The court found that because defendant waived his right to appeal, that issue was not properly before it. *Id.*

¶ 8 Notwithstanding, the *Collins* court granted defendant's alternative request for a \$5 *per diem* credit against the fines imposed as part of his sentence. *Id.* at 372-73. In doing so, the court observed that the statutory right to *per diem* credit was conferred in mandatory terms while being subject to a defendant's application. *Id.* at 373. Thus, the court found, normal terms of waiver did not apply, and the right was cognizable on appeal as a matter of course subject to defendant's application for it. *Id.* Here, in contrast, defendant has raised no issue regarding the \$5 per day credit offset against his fines, and focuses solely on the propriety of the assessments made by the court. Thus, even assuming that the nonwaiver rule of *Collins* is still viable in light

of *Castleberry*, it would not require a different result here because this case does not involve a challenge to a credit or offset of the type at issue in *Collins*.

¶ 9 Based on this authority, it is clear that strict compliance with Rule 604(d) is required and defendant's failure to file such a motion results in the loss of the right to direct appeal. *People v. Dunn*, 342 Ill. App. 3d 872, 878 (2003). Accordingly, since defendant failed to file a Rule 604(d) motion, and no recognized exception to that filing applies (see, e.g., *People v. Foster*, 171 Ill. 2d 469, 473 (1996) (admonishments)), we are precluded from considering defendant's appeal on the merits and must dismiss it, leaving the Post-Conviction Hearing Act as his only recourse. *Flowers*, 208 Ill. 2d at 301; *Wilk*, 124 Ill. 2d at 106-07; *People v. Crump*, 344 Ill. App. 3d 558, 561-62 (2003).

¶ 10 Appeal dismissed.