2016 IL App (2d) 151072-U
No. 2-15-1072
Order filed October 6, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 05-CF-367
JEREMY L. SCHLOSS,	)	Honorable Daniel P. Guerin,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant did not timely file a postjudgment motion, which rendered his later-filed notice of appeal untimely. We therefore dismissed the appeal for lack of jurisdiction.

¶ 2 In this *pro se* appeal, defendant, Jeremy L. Schloss, argues that the trial court erred in denying: (1) his motion to enforce our prior order, and (2) his petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401(f) (West 2014)). We do not address the merits of defendant's arguments because we lack jurisdiction in this case and must dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 In March 2005, defendant pleaded guilty to the aggravated criminal sexual abuse (720 ILCS 5/12-16(a)(2) (West 2004)) of his wife, C.S. In June 2005, he entered a negotiated plea and was sentenced to 180 days in jail and 36 months' sex offender treatment probation. He was ordered to have no direct or indirect contact with C.S. Later that year, the State petitioned to revoke defendant's probation, alleging that he had contacted C.S. Defendant admitted the allegations, and in November 2005, the trial court resentenced him to seven years' imprisonment followed by two years' mandatory supervised release (MSR).

¶ 5 Defendant was scheduled to be released on MSR on July 3, 2008. The day before, on July 2, 2008, the State filed a petition requesting that defendant be adjudicated a sexually violent person (SVP) under the Sexually Violent Persons Commitment Act (SVP Act) (725 ILCS 207/15(e) (West 2008)). According to the State, the filing of the petition tolled defendant's MSR until (1) the petition was dismissed, (2) defendant was found not to be an SVP, or (3) defendant was discharged under the Act. See 725 ILCS 207/15(e) (West 2008).

¶ 6 On June 17, 2010, defendant filed a petition under the Post-Conviction Hearing Act (Post-Conviction Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). The trial court summarily dismissed the petition, and this court affirmed, reasoning that defendant was not challenging the proceedings which led to his conviction, as required by the Post-Conviction Act. *People v. Schloss*, No. 2-10-0393 (2011) (unpublished order under Supreme Court Rule 23).

¶ 7 On March 18, 2013, the jury found defendant to be a SVP, and following a dispositional hearing on May 28, 2013, defendant was committed to the care of the Illinois Department of Human Services (DHS).

¶ 8 On July 22, 2013, defendant filed a petition for habeas corpus. The trial court denied the petition on August 13, 2013. On appeal, this court affirmed the trial court's denial of defendant's petition. *People v. Schloss*, 2014 IL App (2d) 130933-U, ¶¶ 2, 28. However, we vacated as void the tolling of defendant's MSR term. *Id.* ¶¶ 2, 28.

¶ 9 On June 1, 2015, defendant filed[1] a motion to enforce our order and terminate the MSR, and a petition for relief under section 2-1401 of the Code. In defendant's motion to enforce our order, he argued that he had made several attempts to contact the director of the Department of Corrections to terminate the MSR term as required by our order, but he had received no response.

¶ 10 In defendant's section 2-1401 petition, he argued that the charges against him were void because he did not knowingly and intelligently waive his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). He further argued that the requirement that he register as a sexual predator for the rest of his life was void and must be vacated because (1) he was never admonished of such a requirement prior to his guilty plea, (2) there was no finding that the offense he committed was predatory, and (3) the statute requiring such registration violated his due process and was cruel and unusual punishment. Last, defendant argued that his guilty plea and its agreed-upon sentence of three years' probation was rendered moot when the State revoked his probation, so the guilty plea and the subsequently-imposed seven-year sentence were void.

¶ 11 On June 23, 2015, the trial court held a hearing on defendant's petition and motion. The State indicated that its position was that the section 2-1401 petition was untimely. The trial court

[1] Defendant's pleadings are file-stamped June 8, 2015, but his notices of filing state that he put the pleadings in the mail on June 1, 2015. We discuss effective filing dates later in our disposition. See *infra* ¶ 17.

stated that it had reviewed the petition and was going to deny it. Trial court's written order, entered the same day, stated that the Department of Corrections had complied with our order. The order further stated that the trial court had reviewed the section 2-1401 petition, had given the State a chance to respond, and was denying the petition for the reasons stated on the record. The trial court directed the State to mail a copy of the "inmate information sheet" and the trial court's order to defendant.

¶ 12 Defendant filed motions to reconsider the trial court's ruling. The motions have the file-stamped date of August 11, 2015, and defendant's notice of filing states that he mailed them on July 30, 2015.

¶ 13 The State filed responses to the motions to reconsider on September 11, 2015, and October 2, 2015. The trial court denied the motions to reconsider on October 2, 2015. Defendant's notice of appeal has a filing date of October 29, 2015; the certificate of service stated that it was mailed on October 22, 2015.

¶ 14 II. ANALYSIS

¶ 15 Although neither party disputes our jurisdiction in this case, a reviewing court has an independent duty to consider its jurisdiction. *People v. Shaw*, 2016 IL App (4th) 150444, ¶ 55. It is a jurisdictional and mandatory requirement that a notice of appeal be timely filed (*Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009)), and neither the trial court nor an appellate court has the authority to excuse compliance with the filing requirements set forth by supreme court rules (*Won v. Grant Park 2, L.L.C.*, 2013 IL App (1st) 122523, ¶ 20).

¶ 16 Under Illinois Supreme Court Rule 303(a)(1) (eff. Jan. 1, 2015), a party must file a notice of appeal within 30 days after entry of the final judgment appealed from, or "if a timely posttrial

motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions." In order to determine whether a "timely posttrial motion" has been filed, we look to section 2-1203(a) of the Code of Civil Procedure (735 ILCS 5/2-1203(a) (West 2014)), which dictates the time requirements for filing posttrial motions in non-jury cases. It states:

> "In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief." *Id.*

A motion to reconsider a ruling on a section 2-1401 petition is considered a postjudgement motion under Rule 303(a)(1) and is subject to its time requirements. *Harris Bank, N.A. v. Harris*, 2015 IL App (1st) 133017, ¶ 45.

¶ 17 Here, the trial court denied defendant's motion and petition on June 23, 2015. Therefore, defendant had 30 days, until July 23, 2015, to either file a notice of appeal or file a motion directed against the judgment. Under the so-called "mailbox rule," pleadings, including postjudgment motions, are considered filed on the day that an incarcerated defendant places them in the prison mail system. *People v. Liner*, 2015 IL App (3d) 140167, ¶ 13. In order to rely on the date of mailing as the filing date, a defendant is required to provide a proof of service that complies with Illinois Supreme Court Rule 12(b)(3) (eff. Sept. 19, 2014). *Id.* Although defendant is committed to DHS as opposed to incarcerated, the considerations underlying the mailbox rule dictate that it applies equally to him. See *People v. Saunders*, 261 Ill. App. 3d 700,

704 (1994) (when an individual filing a pleading is incarcerated, he cannot control the document's movement after he places it in the institution's mail system); see also *Shatku v. Wal-Mart Stores, Inc.*, 2013 IL App (2d) 120412, ¶ 10 (a postjudgment motion may be deemed filed on the date it is mailed to the circuit clerk).

¶ 18 Defendant's proof of service states that he placed his motions to reconsider in the mail on July 30, 2015, which was more than 30 days after the trial court denied his motion and petition. Accordingly, defendant's motion to reconsider was untimely, and it did not extend the time for filing a notice of appeal.

¶ 19 We recognize that the State actively opposed defendant's postjudgment motion, which leads to the question of whether the revestment doctrine applies. The revestment doctrine applies only where the parties actively participate, without objection, in proceedings that are inconsistent with the merits of the prior judgment. *Manning v. City of Chicago*, 407 Ill. App. 3d 849, 856 (2011). To be inconsistent with the merits, the conduct must be able to be fairly construed as an indication that the parties do not view the order entered as final and binding. *Id.* A party's argument that a judgment should not be set aside is not conduct that is inconsistent with the merits of the prior judgment, and it therefore will not serve to revest the trial court with jurisdiction. *Id.* at 856-57; see also *People v. Bailey*, 2014 IL 115459, ¶ 27 (attempting to defend the merits of the prior judgment cannot be considered inconsistent with the prior judgment, so the revestment doctrine does not apply in such situations); *Shatku*, 2013 IL App (2d) 120412, ¶ 12 (a defendant's active contesting of a motion to reconsider does not revest jurisdiction in the trial court). Accordingly, the State's actions in opposing the merits of defendant's postjudgment motion did not revest jurisdiction in the trial court, as the State was defending the merits of the final judgment.

¶ 20 In sum, defendant did not timely file a postjudgment motion directed against the June 23, 2015, denial of his motion and petition, so his subsequent notice of appeal, which was mailed on October 22, 2015, was untimely, and we must dismiss this appeal for lack of jurisdiction. See *Id.* ¶ 19.

¶ 21 Last, we note that there remains an open motion in this case, in which defendant sought to strike the State's statement of facts. We disagree with defendant's assertion that the State's facts, which include a brief recitation of the circumstances of the underlying crime, are improper. We therefore deny the motion. We further note that we previously granted defendant's motion for an extension of time to file his reply brief. However, we are not bound by that ruling. See *People v. Teran*, 376 Ill. App. 3d 1, 4 (2007) (we have inherent authority to vacate or set aside our own orders). Given our dismissal of the appeal, we now reverse our prior ruling and deny the motion for an extension of time as well.

III. CONCLUSION

¶ 22 For the reasons stated, we dismiss the appeal for lack of jurisdiction.

¶ 23 Appeal dismissed.