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2011 Ill. App. (4th) 100933-U

Filed 7/5/11

NO. 4-10-0933

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Mason County
BRANDON L. COCHRAN,)	No. 09CF85
Defendant-Appellant.)	
)	Honorable
)	Thomas L. Brownfield,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant filed a notice of appeal before the trial court ruled on his timely *pro se* motion for order *nunc pro tunc*, remand with directions to strike the notice of appeal and proceed on defendant's *pro se* motion was necessary.

¶ 2 This appeal comes to us on the motion of defendant's counsel, the office of the State Appellate Defender (OSAD), for summary remand with directions to strike the notice of appeal and proceed on defendant's timely *pro se* motion for order *nunc pro tunc*.

¶ 3 In September 2009, defendant, Brandon L. Cochran, pleaded guilty to attempt (aggravated battery) (720 ILCS 5/8-4(a), 12-4(b)(6) (West 2008)). The trial court sentenced him to 12 months' probation and ordered him to serve 180 days in the Mason County jail.

¶ 4 In January 2010, the State filed a petition to revoke defendant's probation because defendant (1) was arrested in Mason County for the offense of domestic battery while on

probation, (2) failed to participate in anger-management counseling, (3) tested positive for the use of illicit chemicals, and (4) failed to pay the fines and fees assessed as part of his probation. On January 28, 2010, defendant admitted violating the terms of his probation, and the trial court resentenced him to 24 months' probation and ordered him to pay any remaining court costs within six months of release.

¶ 5 On October 4, 2010, the trial court entered a corrected judgment to reflect defendant was convicted of a Class 3 offense rather than a Class 4 offense. On October 18, 2010, defendant filed a *pro se* motion for order *nunc pro tunc*, arguing he was entitled to 45 days' credit against his sentence for time served. The record reflects no ruling on defendant's *pro se* motion.

¶ 6 On November 23, 2010, defendant filed a *pro se* notice of appeal, and OSAD was subsequently appointed to serve as his attorney.

¶ 7 OSAD has filed a motion for summary remand with directions to strike the notice of appeal in this case and remand for proceedings on defendant's timely *pro se* motion for order *nunc pro tunc*. The State has elected not to file a response. We agree with OSAD.

¶ 8 Illinois Supreme Court Rule 606(b) (eff. March 20, 2009) provides, in pertinent part, as follows:

"When a timely posttrial or postsentencing motion directed against the judgment has been filed by counsel or by defendant, if not represented by counsel, any notice of appeal filed before the entry of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court. Upon striking the notice of appeal, the trial court shall forward to the

appellate court within 5 days a copy of the order striking the notice of appeal, showing by whom it was filed and the date on which it was filed. This rule applies whether the timely postjudgment motion was filed before or after the date on which the notice of appeal was filed."

Here, defendant timely filed a motion for order *nunc pro tunc* within 30 days of the October 4, 2010, amendment to his mittimus *nunc pro tunc*. As a result, the notice of appeal must be stricken and further proceedings had in relation to defendant's *pro se* motion.

¶ 9 Accordingly, we grant OSAD's motion and remand the cause with directions to strike the notice of appeal; determine whether defendant is represented by counsel, and if defendant is indigent and desires counsel, appoint counsel to assist defendant with the preparation and presentation of the postplea motion; and hear defendant's motion.

¶ 10 Remanded with directions.