

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).

2013 IL App (4th) 120010-U
NO. 4-12-0010
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
September 3, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
THOMAS O. KARMAZIS,)	No. 09CF464
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's appeal is dismissed because the trial court lacked jurisdiction to hear defendant's motion for additional sentence credit where that motion was filed more than 30 days after sentencing.

¶ 2 In January 2011, defendant, Thomas O. Karmatzis, pleaded guilty to burglary (720 ILCS 5/19-1(a) (West 2008)). The trial court sentenced defendant to 18 years' imprisonment, with 1 day of sentence credit.

¶ 3 Defendant appeals, arguing his trial counsel was ineffective in failing to advise him to surrender his bond to allow him to receive 32 additional days' sentence credit. We dismiss the appeal for lack of jurisdiction.

¶ 4 I. BACKGROUND

¶ 5 On March 12, 2009, the State charged defendant in Champaign County case No.

09-CF-464 (No. 09-CF-464) with one count of burglary (720 ILCS 5/19-1(a) (West 2008)).

Because of defendant's criminal history, he was eligible for Class X sentencing. Defendant agreed to plead guilty to burglary, and the State agreed to cap its sentencing recommendation at 12 years' imprisonment. Defendant was released on bond while awaiting sentencing.

¶ 6 On December 18, 2010, while out on bond, defendant was arrested and charged with four additional counts of burglary in Champaign County case No. 10-CF-2126 (No. 10-CF-2126).

¶ 7 During the January 18, 2011, sentencing hearing, the trial court indicated the parties had worked out a new plea agreement as a result of defendant's subsequent charges. Under the terms of the new deal, defendant agreed to a sentence of 18 years' imprisonment, with one day of sentence credit. In exchange, the State agreed to dismiss the new burglary charges. The court accepted defendant's plea, sentenced defendant according to the terms of his plea, and then admonished him of his appeal rights.

¶ 8 On February 16, 2011, defendant filed a motion to withdraw his guilty plea. However, at the April 20, 2011, hearing on that motion, defendant voluntarily withdrew it.

¶ 9 On August 19, 2011, defendant filed a *pro se* motion for additional sentence credit. Defendant requested credit for time he served in custody from his December 18, 2010, arrest on the subsequent burglary charges through his January 18, 2011, sentencing hearing (a total of 32 days' credit).

¶ 10 According to the August 29, 2011, docket entry, the trial court denied defendant's motion, finding he was not "in custody in [case No.] 09-CF-464" (the initial burglary charge to which defendant pleaded guilty) because he had not surrendered his bond, which he posted on

April 19, 2010.

¶ 11 On January 4, 2012, defendant, *pro se*, filed a request for leave to file a late notice of appeal. This court granted defendant's motion on January 5, 2012. That same day, the office of the State Appellate Defender (OSAD) was appointed to represent defendant. On March 14, 2012, OSAD filed a motion for leave to file a late notice of appeal because defendant's "*pro se* late notice of appeal failed to accurately reflect the offense of which convicted, the sentence imposed, the date of judgment and the nature of appeal." On March 16, 2012, this court granted OSAD's motion.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant concedes the trial court correctly found he was ineligible for additional sentence credit because he was not "in custody" in case No. 09-CF-464 because did not surrender his bond in that case after being arrested on the additional burglary charges in case No. 10-CF-2126. However, defendant argues his trial counsel was ineffective in failing to advise him to surrender his bond in case No. 09-CF-464 to allow him to receive additional sentence credit in that case for the 32 days he spent in custody in case No. 10-CF-2126.

¶ 15 As an initial matter, we observe defendant filed his *pro se* motion for additional sentence credit in this case more than 30 days after sentencing. While this specific jurisdictional issue was not addressed by either party, the supreme court has emphasized "courts of review have an independent duty to consider jurisdiction even if a jurisdictional issue is not raised by the parties." *People v. Lewis*, 234 Ill. 2d 32, 36-37, 912 N.E.2d 1220, 1123 (2009). Accordingly, this court directed the parties to file supplemental briefs on the issue of the trial court's

jurisdiction to hear defendant's motion for additional credit. We have now considered the supplemental briefs.

¶ 16 Regardless of the type of guilty plea a defendant enters into, Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) requires the filing of a postplea motion within 30 days of the trial court's imposition of a defendant's sentence. Where more than 30 days have elapsed since sentencing, "the trial court is divested of jurisdiction to entertain a defendant's motion to vacate the judgment or reconsider the sentence ***." *People v. Flowers*, 208 Ill. 2d 291, 303, 802 N.E.2d 1174, 1181 (2003). The only continuing powers a trial court possesses over a case after the passage of those 30 days is the "enforcement of the judgment or correction of clerical errors or matters of form so that the record conform[s] to the judgment actually rendered." *Flowers*, 208 Ill. 2d 291, 306-07, 802 N.E.2d at 1183. This power to correct the record extends to amending the sentencing judgment. See *People v. Latona*, 184 Ill. 2d 260, 278, 703 N.E.2d 901, 910 (1998) ("While a court may not *modify* its judgment after it has lost jurisdiction of a case, it may *correct* the record to make it accurately reflect the judgment that was in fact entered." (Emphases in original.)). However, the trial court's correction of a mittimus is a ministerial act, which "does not change the underlying sentence." *People v. Wright*, 337 Ill. App. 3d 759, 762, 787 N.E.2d 870, 872-73 (2003).

¶ 17 In his supplemental brief, defendant argues his motion for additional sentence credit, although not so captioned, was more in the nature of a motion to correct the sentencing judgment because in addition to specifically requesting he receive sentence credit from December 18, 2010, to January 18, 2011, it also requested a correction in the spelling of his name on the judgment order. (As stated, the trial court denied the motion.) In response, the State

argues defendant's motion sought to have the court modify the judgment and sentence and not simply correct the sentencing judgment. We agree with the State.

¶ 18 In this case, the record reflects defendant's fully negotiated guilty plea included just one day of sentence credit. At sentencing, the following colloquy took place:

"[THE COURT: The assistant state's attorney] has indicated that instead of going to a sentencing hearing with a sentencing range of six to 12 [years] and then having [Champaign County case No.] 10-CF-2126 tried[,] that your client is going to agree to a sentence of 18 years in the [D]epartment of [C]orrections, *credit for one day served*, and [case No.] 10-CF-2126 is going to be dismissed. Is that correct, Mr. Welch?

MR. WELCH [(defendant's trial counsel)]: *That is our agreement, Your Honor ***.*" (Emphases added.)

¶ 19 Because defendant agreed to a sentence which included just one day of credit, his motion for additional credit sought to change the underlying sentence. As such, it was not simply a request to correct the written sentencing judgment to reflect the trial court's stated sentencing judgment. Thus, defendant's motion was subject to the strictures of Rule 604(d) (eff. July 1, 2006).

¶ 20 Here, the trial court accepted defendant's guilty plea and sentenced him on January 18, 2011. Defendant filed his postplea motion for additional sentence credit on August 19, 2011, *i.e.*, more than 30 days after that judgment was entered. By that point, the court's jurisdiction to hear defendant's motion had lapsed. See *Flowers*, 208 Ill. 2d at 303, 802 N.E.2d at 1181 ("The

jurisdiction of trial courts to reconsider and modify their judgments is not indefinite."). Because the court's jurisdiction over the underlying case had lapsed, it had no authority to address defendant's motion. *Flowers*, 208 Ill. 2d at 306, 802 N.E.2d at 1183. As the court was without jurisdiction to hear defendant's motion, its order denying that motion is void. *Flowers*, 208 Ill. 2d at 306, 802 N.E.2d at 1183 (ruling by a trial court in the absence of jurisdiction is void).

¶ 21 As a result, this court lacks jurisdiction to entertain defendant's appeal. See *Flowers*, 208 Ill. 2d at 307, 802 N.E.2d at 1184 (where the trial court lacked jurisdiction to consider the defendant's motion, the appellate court had no authority to consider the merits of the appeal from the court's judgment denying the motion and should have dismissed the appeal). Accordingly, we dismiss defendant's appeal for lack of appellate jurisdiction.

¶ 22 In closing, we note, even if we had jurisdiction to entertain defendant's appeal, he could not succeed because, as stated above, his fully negotiated plea included an agreement for one day of sentence credit. "Allowing [a] defendant to agree to a sentence that included consideration of his presentencing credit, then on appeal get his agreed-upon sentence reduced, would be unfair." *People v. Williams*, 384 Ill. App. 3d 415, 417, 892 N.E.2d 129, 130-131 (2008) (citing *In re Detention of Swope*, 213 Ill. 2d 210, 217, 821 N.E.2d 283, 287 (2004)). Defendant received the credit he bargained for.

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reason, we dismiss defendant's appeal.

¶ 25 Dismissed.