

**NOTICE**  
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2023 IL App (4th) 220467-U

NO. 4-22-0467

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
January 19, 2023  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Winnebago County
CHAYSE KELLER,	)	No. 16CF942
Defendant-Appellant.	)	
	)	Honorable
	)	Brendan A. Maher,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Justices Cavanagh and Steigmann concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court granted OSAD’s motion to withdraw and dismissed the appeal.
- ¶ 2 In April 2022, defendant, Chayse Keller, filed a “Motion for Modified/Amended Mittimus,” arguing he was entitled to have his 3-year term of mandatory supervised release (MSR) reduced to 18 months. The trial court dismissed defendant’s motion after concluding it lacked jurisdiction to modify his sentence, and defendant appealed. The Office of the State Appellate Defender (OSAD) was appointed to represent defendant. OSAD now moves to withdraw on the basis it can raise no arguably meritorious claim defendant was entitled to the relief requested. For the reasons discussed, we grant OSAD’s motion to withdraw and dismiss the appeal.

¶ 3

## I. BACKGROUND

¶ 4 On February 26, 2018, defendant pleaded guilty to possession of between 15 and 100 grams of cocaine. 720 ILCS 570/402(a)(2)(A) (West 2016). The trial court, pursuant to the terms of a plea agreement, sentenced defendant to 13 years' imprisonment with a 3-year term of MSR. Defendant did not file any postplea motions or a direct appeal.

¶ 5 In April 2022, defendant *pro se* filed a "Motion for Modified/Amended Mittimus." Defendant argued two recently enacted amendments to section 5-8-1 of the Unified Code of Corrections (730 ILCS 5/5-8-1(d)(1.5), (g) (West Supp. 2021)) entitled him to have his 3-year MSR term reduced to 18 months. The court appointed counsel and conducted a hearing on defendant's motion in May 2022. The court ultimately concluded it lacked jurisdiction to consider defendant's motion, as more than 30 days had passed since defendant was sentenced and he did not file any postplea motions or a direct appeal. The court dismissed the motion, and defendant appealed.

¶ 6 OSAD was appointed to represent defendant on appeal. OSAD subsequently filed a motion to withdraw as appellate counsel on the basis it could raise no meritorious argument on appeal. We granted defendant leave to respond to OSAD's motion, and he filed a timely response. In the response, defendant raises the same contentions he raised in the motion to amend the mittimus.

¶ 7

## II. ANALYSIS

¶ 8 OSAD contends it can raise no colorable argument defendant was entitled to the relief requested in the motion to amend the mittimus. Specifically, OSAD asserts that, while it is arguable the trial court erred in finding it lacked jurisdiction to consider defendant's motion, it

nonetheless can raise no potentially meritorious argument regarding the substance of defendant's motion.

¶ 9 Generally, a trial court loses jurisdiction over a case 30 days after the entry of a final judgment in the absence of a timely postjudgment motion. *People v. Bailey*, 2014 IL 115459, ¶ 14; see also *People v. Flowers*, 208 Ill. 2d 291, 303 (2003) (“Normally, the authority of a trial court to alter a sentence terminates after 30 days.”). Once the 30-day period has expired, “[t]he only continuing power the [trial] court possess[es] over the case [is] limited to 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 at 306-07; see also *People v. Latona*, 184 Ill. 2d 260, 278 (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.)).

¶ 10 Here, although defendant labeled the motion as a “Motion for Modified/Amended Mittimus,” it is clear from the motion's substance that defendant was not seeking to correct a clerical error, but rather to modify the sentence. See, e.g., *People v. Smith*, 371 Ill. App. 3d 817, 821 (2007) (“[A] motion's content determines its character, not the title or label asserted by the movant.”). In the motion, defendant requested the court reduce his 3-year MSR term, which was accurately reflected in the sentencing order, to 18 months. In other words, defendant did not ask the court to exercise its “continuing power” over the case to correct a clerical error but instead asked the court to make a substantive change to the sentencing judgment. *Flowers*, 208 Ill. 2d at 306. Because defendant filed his motion beyond the expiration of the 30-day period—he was sentenced on February 26, 2018, and filed the motion in April 2022—the trial court lacked

jurisdiction to modify his sentence and was correct in dismissing the motion. See *Bailey*, 2014 IL 115459, ¶ 14.

¶ 11 Moreover, as OSAD points out, the statute defendant cites has no application here. The relevant portions of the statute provide as follows:

“(d) Subject to earlier termination under Section 3-3-8, the parole or mandatory supervised release term shall be written as part of the sentencing order and shall be as follows:

\*\*\*

(1.5) except as provided in paragraph (7) of this subsection (d), for a Class X felony except for the offenses of predatory criminal sexual assault of a child, aggravated criminal sexual assault, and criminal sexual assault if committed on or after December 13, 2005 (the effective date of Public Act 94-715) and except for the offense of aggravated child pornography under Section 11-20.1B, 11-20.3, or 11-20.1 with sentencing under subsection (c-5) of Section 11-20.1 of the Criminal Code of 1961 or the Criminal Code of 2012, if committed on or after January 1, 2009, 18 months;

\* \* \*

(g) Notwithstanding any other provisions of this Act and of Public Act 101-652: \*\*\* (ii) the provisions of paragraphs (1.5) and (2) of subsection (d) are effective on July 1, 2021 and shall apply to all individuals convicted on or after the effective date of paragraphs (1.5) and (2) of subsection (d).” 730 ILCS 5/5-8-1(d)(1.5), (g) (West Supp. 2021)

The plain language of subsection (g) makes it clear the statute does not apply retroactively. Subsection (g) provides that only those individuals convicted of certain Class X felonies “on or after” July 1, 2021, are to receive an 18-month term of MSR. 730 ILCS 5/5-8-1(g) (West Supp. 2021). Defendant was convicted and sentenced on February 26, 2018. Therefore, the statute he relies on has no application to his situation. Accordingly, we find no argument can be made the trial court erred in dismissing defendant’s motion, and we grant OSAD’s motion to withdraw and dismiss the appeal.

¶ 12

### III. CONCLUSION

¶ 13

For the reasons stated, we grant OSAD’s motion to withdraw and dismiss the appeal.

¶ 14

Appeal dismissed.