2021 IL App (4th) 200069-U

NO. 4-20-0069

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 14, 2021
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JOSEPH T. WISNIEWSKI, Defendant-Appellant.	) Appeal from the) Circuit Court of) Morgan County) No. 18CF226)) Honorable) Christopher E. Reif,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court lacks jurisdiction to review an order unspecified in the notice of appeal unless the order was a preliminary or interlocutory order that produced the order specified in the notice of appeal.

¶ 2 The circuit court of Morgan County denied defendant, Joseph T. Wisniewski, permission to file a successive postconviction petition. See 725 ILCS 5/122-1(f) (West 2018). He appeals. We dismiss his appeal for lack of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 On March 5, 2019, defendant entered a negotiated guilty plea to one count of criminal sexual assault (720 ILCS 5/11-1.20(a)(3) (West 2018)). In return, count II, charging defendant with unlawful possession of child pornography (*id.* § 11-20.1(a)(6)), was dismissed, and the prosecutor recommended a 10-year prison term. Later that same day, the circuit court sentenced

him to imprisonment for 10 years, to be followed by mandatory supervised release for 3 years to life.

¶ 5 On June 24, 2019, the circuit court received a letter from defendant, in which he requested the court to appoint Bonjean Law Office to look into the possibility of getting the prison term reduced and the mandatory supervised release eliminated. According to defendant, his plea counsel, Monroe McWard, had falsely told him that "3 to life was how long [he] had to reg[i]ster." McWard had "lied" in that respect, defendant asserted, but at the time defendant "was dumb and trusted the lawyer." According to defendant, McWard had admitted not even looking in the case file before talking defendant into pleading guilty. Just to get the whole thing over with and to minimize conflict, defendant had followed McWard's recommendation by pleading guilty to criminal sexual assault. Now, citing a recantation by the victim and alleging intimidation tactics by the police, defendant insisted that he had never done anything of which he had been accused.

¶ 6 On October 24, 2019, the circuit court received a second letter from defendant. In this letter, he made two alternative requests: "I'm asking for you to please withdraw my plea or post conviction relief." He informed the court that on October 10, 2019, in Morgan County case Nos. 18-JA-18 and 18-JA-19, the victim, A.W., had submitted a handwritten letter "saying [that defendant] did not do any of the things [he] was said to have done in this case." McWard, defendant asserted, had rendered ineffective assistance by failing to raise this claim of actual innocence. Defendant proposed, "[F]or the year in jail I have spent I will take a one year sentence for a non sex crime that has no [registration] of anything to do with sex crimes."

¶ 7 On October 24, 2019, the circuit court entered the following order:

> "The Defendant's Motion to Withdraw Plea is untimely and therefore, the Court lacks jurisdiction to hear the Motion. If the Motion were to be construed as a

Post Conviction Motion then the Court after review finds it to be frivolous and patently without merit. The Court also notes that the Motion is not supported by affidavits or documents. There is also no reason given why these requirements are not met.

Wherefore, this matter is summarily dismissed if a post conviction petition."

¶ 8 On November 5, 2019, the circuit court received a third letter from defendant. He began this letter by acknowledging the court's finding of no jurisdiction. Nevertheless, because in his previous correspondence he had sent no evidence, he now sought to remedy that deficiency. He now enclosed a letter by A.W. in which she claimed to have "lied about everything just to get back at [defendant]" (to quote from her letter). Also, A.W. wrote, she "fe[lt] like she was getting pressed into say[ing] things that the cops wanted [her] to [say]." Defendant had insisted to McWard that he was innocent (defendant explained in his letter to the court), but McWard had told him "three different times he never read [his] case file." Defendant had taken "a 10 year plea for a crime [he] did not do" because McWard had warned him to "take it or [he] would do 30 years." "Please let my case be reheard and reopened," defendant requested. "Please withdraw my plea or give me post-conviction."

¶ 9 On November 15, 2019, the circuit court received a fourth letter from defendant. In this letter, defendant made the following representations. A week after A.W. accused him, she wrote a letter recanting her accusations. Soon after A.W. wrote this initial recantation, she was taken to the children's advocacy center for a second session, in which a detective named Bryant "pres[sured] [her] on what to say." A year later, in case Nos. 18-JA-18 and 18-JA-19, A.W. wrote another letter of recantation. In addition to his claim of actual innocence, defendant raised a claim of ineffective assistance. According to him, McWard was ineffective in two ways. First, before the

guilty plea, McWard misled defendant by advising that three years to life was the period during which he, defendant, would have to register as a sex offender whereas actually "it me[a]nt 3 years to life p[a]role." Second, a week after pleading guilty, defendant requested McWard to file a motion to withdraw the guilty plea, but McWard refused to do so "because [defendant] would get 30 years AND [defendant] did not want that." "Please give me the post-conviction," defendant requested, "so I can prove I did not do this and go home." "Please LET ME DO POST-CONVICTION," he repeated.

¶ 10 On November 15, 2019, the circuit court entered an order that read merely as follows:

> "The Court has already ruled on defendant's postconviction petition.
>
> Defendant did not obtain leave to file a successive petition."

¶ 11 On December 4, 2019, defendant filed, *pro se*, a document titled "P[e]tition For Leave of Post-Conviction P[e]tition," in which he "ask[ed] the [circuit] court to grant [him] a second chance to file a successive post-conviction p[e]tition."

¶ 12 On that same day, December 4, 2019, the circuit court entered an order ruling simply that "[defendant's] motion [was] denied."

¶ 13 Illinois Supreme Court Rule 651(b) (eff. July 1, 2017) provided that, "[u]pon the entry of a judgment adverse to a petitioner in a postconviction proceeding," the "clerk of the trial court" had to mail or deliver to the petitioner a notice of his or her appeal rights. The order of December 4, 2019, denying defendant permission to file a successive postconviction petition was an order adverse to him. Therefore, the clerk was supposed to mail or deliver to him a notice of his appeal rights. It does not appear from the record that any such notice was mailed or delivered to him.

¶ 14 Nevertheless, on January 30, 2020, defendant filed a *pro se* notice of appeal. But next to the preprinted language "Date of Judgment or Order," he wrote "March 6[,] 2019," not December 4, 2019.

¶ 15 On January 31, 2020, the circuit clerk filed a notice of appeal on defendant's behalf. This time, the "Date of Judgment or Order" was March 5, 2019.

¶ 16 On February 28, 2020, defendant filed another *pro se* notice of appeal. Next to "Date of Judgment or Order," he wrote "December 18, 2019." He described the "nature of [the] order appealed from" as "Denial of Post-conviction Petition."

¶ 17 On March 3, 2020, the circuit clerk filed another notice of appeal on defendant's behalf. As in the preceding *pro se* notice of appeal, the "Date of Judgment or Order" was "December 18, 2019," and "the nature of [the] order appealed from" was "Denial of Post-Conviction Petition."

¶ 18 Those four notices of appeal, defendant informs us in his jurisdictional statement, were "[d]eficient notices of appeal."

¶ 19 On June 23, 2020, appellate counsel moved for our permission to file a late notice of appeal on the ground that defendant never was given the written notice required by Rule 651(b). The final numbered paragraph of the motion reads as follows: "The undersigned states that there is merit to this appeal, and respectfully requests that this Court grant the motion for leave to file a late notice of appeal." Next to "Date of Judgment or Order," the proposed late notice of appeal reads "November 15, 2019[,] and December 4, 2019."

¶ 20 On June 24, 2020, the appellate court granted defendant's motion to file the late notice of appeal. Again, according to the late notice of appeal, the orders from which defendant appeals are those the circuit court entered on November 15 and December 4, 2019.

¶ 21 II. ANALYSIS

¶ 22 Defendant complains that the circuit court recharacterized the letter it received from him on October 24, 2019, as a postconviction petition without first giving him the admonitions required by *People v. Shellstrom*, 216 Ill. 2d 45, 57 (2005). In that case, the supreme court laid down the following rule:

> "[W]hen a circuit court is recharacterizing as a first postconviction petition a pleading that a *pro se* litigant has labeled as a different action cognizable under Illinois law, the circuit court must (1) notify the *pro se* litigant that the court intends to recharacterize the pleading, (2) warn the litigant that this recharacterization means that any subsequent postconviction petition will be subject to the restrictions on successive postconviction petitions, and (3) provide the litigant an opportunity to withdraw the pleading or to amend it so that it contains all the claims appropriate to a postconviction petition that the litigant believes he or she has. If the court fails to do so, the pleading cannot be considered to have become a postconviction petition for purposes of applying to later pleadings the Act's restrictions on successive postconviction petitions." *Id.*

Defendant contends that because the circuit court never gave him the *Shellstrom* admonitions before recharacterizing, as a postconviction petition, the letter the court received from him on October 24, 2019, *Shellstrom* forbade the court to treat his subsequent letters as successive postconviction petitions.

¶ 23 Before examining defendant's premise that, on October 24, 2019, the circuit court recharacterized his letter, we should make sure that we have jurisdiction to review the order of October 24, 2019. In an appeal in a postconviction proceeding, the notice of appeal must specify

the judgment or order from which the appeal is taken. See Ill. S. Ct. R. 606(d) (eff. July 1, 2017), Art. VI Forms Appendix. The appellate court's jurisdiction is confined to the orders specified in the notice of appeal (*Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 442 (1985); *People v. Baldwin*, 2020 IL App (1st) 160496, ¶ 31) and to preliminary or interlocutory orders that were in the procedural progression leading up to the orders specified in the notice of appeal (*Ferguson*, 111 Ill. 2d at 442; *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1023 (2009)).

¶ 24 The order of October 24, 2019, was not a preliminary or interlocutory order. Also, the order of October 24, 2019, is unspecified in the late notice of appeal (even assuming that such a specification could have been jurisdictionally effectual after the passage of so much time). Therefore, we lack jurisdiction to consider the merits of defendant's argument. Again, his argument is as follows, to quote from his brief: "Because the circuit court failed to provide [defendant] with any of the three required admonishments before re-characterizing his October 24, 2019[,] letter as a post-conviction petition, it was barred from treating any of his future letters as 'successive' post-conviction petitions or summarily dismissing any such 'petitions.' " To address that argument, we would have to review the order of October 24, 2019—which we lack jurisdiction to review.

¶ 25 III. CONCLUSION

¶ 26 Therefore, we dismiss this appeal for lack of jurisdiction.

¶ 27 Appeal dismissed.