No. 127965

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court
	)	of Illinois, Fourth District,
Plaintiff-Appellee,	)	No. 4-20-0147
	)	
	)	There on Appeal from the Circuit of
v.	)	the Seventh Judicial Circuit,
	)	Sangamon County, Illinois,
	)	No. 03 CF 1233
	)	
ITASHA WALLS,	)	The Honorable
	)	John Madonia,
Defendant-Appellant.	)	Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

E-FILED
6/7/2022 2:54 PM
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NATURE OF THE CASE

Defendant appeals from the judgment of the Illinois Appellate Court, Fourth District, which determined that it lacked subject matter jurisdiction over defendant's appeal because the notice of appeal was untimely. No question is raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether defendant's notice of appeal, filed more than 14 years after the trial court denied his Rule 604(d) motion to reconsider sentence, was untimely.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315(a) and 612(b)(2). On March 30, 2022, this Court allowed defendant's petition for leave to appeal.

SUPREME COURT RULES INVOLVED

Illinois Supreme Court Rule 604 states:

> **(d) Appeal by Defendant From a Judgment Entered Upon a Plea of Guilty.** No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment.
>
> * * *
>
> The defendant's attorney shall file with the trial court a certificate stating that the attorney has consulted with the defendant either by phone, mail, electronic means or in person to ascertain defendant's contentions of error in the sentence and the entry of the plea of guilty, has examined the trial court file and both the report of proceedings of the plea of guilty and the report of proceedings in the sentencing

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> hearing, and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings.
>
> The motion shall be heard promptly, and if allowed, the trial court shall modify the sentence or vacate the judgment and permit the defendant to withdraw the plea of guilty and plead anew. If the motion is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, measured from the date of entry of the order denying the motion. Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived.

Illinois Supreme Court Rule 606 states:

> **(b) Time.** Except as provided in Rule 604(d), the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from or if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion.

STATEMENT OF FACTS

A. In 2005, defendant pleads guilty and files a motion to reconsider sentence.

On July 18, 2005, defendant pleaded guilty to two counts of second degree murder, one count of aggravated battery with a firearm, and one count of aggravated discharge of a firearm. Sup2R56-77.[1] In exchange for defendant's guilty plea, the People dismissed six first degree murder counts. Sup2R71-72. The parties stipulated that if the case went to trial, the evidence would show that defendant and his older brother fired 18 shots into a car, killing two passengers and injuring the driver. Sup2R73. Further, the

[1] "C_," "R_," "SupC_," "SupR_," and "Sup2R_" refer to the common law record, the report of proceedings, the supplemental common law record, the supplemental report of proceedings, and the second supplemental report of proceedings, respectively.

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parties stipulated, the evidence would show that defendant and his brother believed that the people in the car had previously shot at defendant's home and that the shooting was therefore justified as self-defense, but their belief was unreasonable. *Id.*

The trial court accepted defendant's plea and sentenced him to three consecutive 15-year prison terms for the second-degree murder and aggravated battery counts, R139, having found that one-act, one-crime principles barred an additional sentence for the aggravated discharge of a firearm count, R112; *see also* SupC4.

Defendant's counsel filed a timely motion to reconsider the sentence pursuant to Rule 604(d), C96, which the trial court denied on October 14, 2005, R149. After denying the motion, the trial court noted that "we have just had a discussion before court here about the applicabilities [*sic*] of Rule 604(D) [*sic*]," and noted that counsel "may need to file a [Rule 604(d) certificate] before the Notice of Appeal can be filed in this case." R150.

On November 14, 2005, defendant's counsel filed a motion to reconsider the denial of the motion to reconsider the sentence, asserting that he had not reviewed the transcript of the change of plea hearing at the time of the hearing (and therefore at that time he would have been unable to certify that the requirements of Rule 604(d) were met). C100. The trial court did not rule on the motion, and nothing further occurred in the case for more than four years.

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B. The trial court strikes defendant's 2010 collateral attack and orders counsel to file an amended motion to reconsider sentence and a Rule 604(d) certificate.

On April 2, 2010, defendant filed a *pro se* petition for relief from judgment pursuant to 735 ILCS 5/2-1401, arguing that his consecutive sentences were void because they were unauthorized by the Code of Corrections. C109-18. Counsel was appointed and, on February 25, 2019, counsel filed an amended petition asking that the petition also be considered as a postconviction petition under 725 ILCS 5/122-1. C152. Counsel later filed a second amended petition that made minor changes to the amended petition. C209-38.

Following a July 11, 2019 status hearing, the trial court "clarifie[d] the status of this case for the parties." C285. The court found that "defendant's original motion to reconsider sentence remains pending and unresolved at the trial level" due to the lack of a Rule 604(d) certificate. *Id.* (capitalization altered). The court struck defendant's post-plea filings seeking collateral review, and directed counsel to "comply with all provisions of Rule 604 and certify that all requirements have been completed" within 28 days and "before further substantive hearing is to be held on the [original] motion" to reconsider sentence. *Id.*; *see also* R172-75; R178; R190-94.

Ultimately, defense counsel filed a third amended motion to reconsider the sentence, C399, "Additional Authority" in support of this third amended motion to reconsider the sentence, C431, and a Rule 604(d) certificate, C433.

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On March 4, 2020, following a hearing, the trial court rejected defendant's challenge to his consecutive sentences, denied the third amended motion to reconsider sentence, and directed the clerk to file a notice of appeal. R234; C435-37. The clerk filed a notice of appeal on March 6, 2020, C445, and appellate counsel filed an amended notice of appeal on March 24, 2020, C463.

C. The appellate court dismisses the appeal for lack of jurisdiction.

The appellate court determined that it lacked subject matter jurisdiction over any direct appeal from the guilty plea proceedings. *People v. Walls*, 2021 IL App (4th) 200147-U, ¶ 19. The court reasoned that, under Rule 606(b), defendant had 30 days from October 14, 2005, the date on which the trial court denied his motion to reconsider sentence, to file a notice of appeal. *Id.*

And, the court further reasoned, neither counsel's failure to file a Rule 604(d) certificate nor the subsequent motion for reconsideration of the denial of the motion to reconsider sentence changed that calculation. Defense counsel's failure to file a Rule 604(d) certificate did not cause the motion to reconsider sentence to remain "pending and unresolved" because such a certificate was not jurisdictional. *Id.* ¶¶ 20-21 (citing *People v. Flowers*, 208 Ill. 2d 291, 301 (2003)). Moreover, the motion to reconsider the denial of the motion to reconsider sentence did not toll the time for filing a notice of appeal. *Id.* ¶ 23 (citing *People v. Johnson*, 2017 IL App (4th) 160853, ¶ 33;

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People v. Miraglia, 323 Ill. App. 3d 199, 205 (2001)). Not only did the motion to reconsider the denial of the motion to reconsider sentence not toll the time for appeal, but under the facts of this case, where defendant did not obtain a ruling on his motion for over four years, the court held, "we may presume that defendant abandoned the motion." *Id.* ¶ 27.

In sum, the appellate court concluded that defendant's notice of appeal was nearly 15 years too late, that the trial court erred in finding the lack of compliance with Rule 604(d) rendered the proceedings on defendant's initial motion to reconsider sentence nonfinal and pending over 14 years later, and that the trial court lacked authority to direct additional proceedings under Rule 604(d). *Id.* ¶ 28. Accordingly, the court vacated the trial court's judgment and the order striking the collateral proceedings and remanded for further proceedings on those collateral issues. *Id.*

STANDARD OF REVIEW

Whether, as the appellate court held, defendant's notice of appeal was untimely requires interpretation of Illinois Supreme Court Rules 604 and 606. The interpretation of this Court's Rules presents a question of law that the Court reviews de novo. *People v. Tousignant*, 2014 IL 115329, ¶ 8.

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ARGUMENT

I. Requiring That a Notice of Appeal Be Filed Within 30 Days of the Trial Court's Denial of a Rule 604(d) Motion Gives Effect to the Plain Meaning of Rules 604 and 606, as Well as the Purpose of the Rules.

To answer whether defendant's notice of appeal was untimely, or whether his filing of a motion to reconsider the denial of his motion to reconsider sentence tolled the time to appeal, this Court looks to the plain language of its Rules, for the same principles that govern the construction of statutes guide the interpretation of court rules. *People v. Easton*, 2018 IL 122187, ¶ 13. The goal is to ascertain and give effect to the intent of the drafters, *id.*, and the most reliable indicator of that intent is the plain and ordinary meaning of the Rules' language, *Tousignant*, 2014 IL 115329, ¶ 8. Words and phrases should not be considered in isolation but interpreted in light of other relevant provisions and the Rules as a whole. *Id.* This Court may also consider the purpose behind the Rules and the evils sought to be remedied. *Id.* Here, both the plain language of the Rules and their underlying purposes require a defendant seeking appellate review of alleged errors in a sentence imposed upon a guilty plea to file a notice of appeal within 30 days after the trial court denies the Rule 604(d) motion to reconsider sentence. Further, the Rules' plain language and purposes allow for no exceptions to this requirement.

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A. The plain language of the Rules dictates that a defendant must file the notice of appeal within 30 days of the date on which the trial court denies the motion to reconsider sentence.

The plain language of Rules 604(d) and 606(b) clearly establishes when defendants must file a notice of appeal after they have been sentenced following a guilty plea.[2] Rule 604(d) requires that a defendant who entered an open plea of guilty and wishes to challenge his sentence must first file in the trial court, within 30 days of the plea, a motion to reconsider sentence. If that motion is denied, Rule 606(b) provides the time within which to file a notice of appeal: 30 days. And Rule 604(d) provides that the 30-day period begins running from the date court enters the order denying the Rule 604(d) motion to reconsider the sentence. Any other reading ignores the plain language of the Rules.

To begin, Rule 604(d) governs appeals from judgments entered upon a plea of guilty. Rule 604(d) requires that before a defendant who entered a plea of guilty files a notice of appeal, he must first file a motion "within 30 days of the date on which sentence is imposed" to either reconsider the sentence or withdraw the plea of guilty. "If the motion is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, *measured from the date of entry of the order denying the motion*."

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[2] Defendant's Rule 604(d) motion to reconsider sentence was denied in 2005, and the notice of appeal was filed in 2019. However, the relevant language in these Rules has not changed, so the result is the same under either version of the Rules.

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Ill. S. Ct. R. 604(d) (emphasis added). And Rule 606 provides a 30-day window to appeal. The Rules' language is thus clear and unambiguous: a defendant who pleads guilty has 30 days in which to file a notice of appeal from the denial of a motion to reconsider sentence, which period runs from the "date of entry of the order denying the [Rule 604(d)] motion."

To overcome this plain meaning of the Rules, defendant rearranges the words from Rule 604 and Rule 606 to form a new rule of his own creation. Specifically, defendant argues that this Court should interpret the Rules to provide that "when a post-plea motion 'is denied, a notice of appeal from the judgment and sentence shall be filed' 'within 30 days' 'measured from the date of the entry of the order denying the [post-plea] motion' or if 'a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion.'" Def. Br. 12. But that is not what either Rule 604(d) or Rule 606 actually says. Instead, defendant's proposed interpretation starts with a phrase from Rule 604(d), inserts a few words from Rule 606(b), returns to Rule 604(d), and then concludes with another excerpt from Rule 606(b).

Defendant's reconstruction of the Rules distorts their meaning. Rule 604(d) states that if the motion to reconsider sentence "is denied, a notice of appeal from the judgment and sentence shall be filed within the time allowed in Rule 606, measured from the date of entry of the order denying the motion." But defendant then adds a clause from Rule 606 as if it were part of

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Rule 604: "or if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion."

In contravention of established statutory construction principles, defendant reads into Rule 604 an exception that simply is not there. *E.g.*, *People v. Clark*, 2018 IL 122495, ¶ 8 ("We do not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the expressed intent."). Defendant also ignores the context of that clause in Rule 606. What Rule 606(b) actually says is: "Except as provided in Rule 604(d), the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from or if a motion directed against the judgment is timely filed, within 30 days after the entry of the order disposing of the motion." In other words, defendant amends Rule 604(d) by adding a clause from Rule 606(b) that Rule 606 explicitly says does *not* apply to Rule 604(d). Indeed, it would be nonsensical for a general clause in Rule 606(b) that deals with a motion directed against the judgment to apply to Rule 604(d), which already addresses with specificity a circumstance in which a motion directed against the judgment must be filed. The language from Rule 606(b) would be wholly redundant in such a situation.

In sum, Rule 606(b) provides the appeal period (30 days), and Rule 604(d) provides the relevant start date when the appeal is from a guilty plea (the date on which the court enters the order denying the motion to

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reconsider sentence). Read together, the Rules clearly and unambiguously provide that a defendant must file the notice of appeal within 30 days of the order denying the motion to reconsider sentence.

B. Adhering to the plain language of the Rules promotes their dual purposes of ensuring an opportunity for courts to correct errors and promoting finality following guilty pleas by not permitting a successive post-sentencing motion to toll the time to file a notice of appeal.

Rule 604(d) reflects the best efforts of this Court to order the process of guilty pleas and ensuing appeals in order to provide the trial court an opportunity to correct any errors prior to the filing of an appeal, while also preventing abuses by defendants and ensuring timely completion of proceedings. Defendant's suggestion that the filing of a motion to reconsider the denial of a Rule 604(d) motion to reconsider sentence tolls the time to appeal would thwart the Court's efforts to balance these interests.

This Court has explained that its Rules, including Rule 604(d), "mesh together not only to ensure that defendants' constitutional rights are protected, but also to avoid abuses by defendants." *People v. Wilk*, 124 Ill.2d 93, 103 (1988). "These rules are not written in a vacuum and they represent our best efforts at ordering the complex and delicate process of plea bargains and guilty pleas." *Id.* at 104. "Rule 604(d) governs the procedure by which a criminal defendant may appeal from a judgment entered on a guilty plea." *People v. Easton*, 2018 IL 122187, ¶ 20. Specifically, "Rule 604(d) is designed to ensure that any potential errors in the entry of a guilty plea are brought to

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the trial court's attention prior to the filing of an appeal." *Id.* ¶ 20; *see also* *Wilk*, 124 Ill.2d at 104 ("A hearing under Rule 604(d) allows a trial court to immediately correct any improper conduct or any errors of the trial court," and if the motion "is denied, that decision can be considered on review.").

Defendant is incorrect when he argues that his interpretation is necessary to "'provide[ ] the trial court with the opportunity to correct any errors that might have resulted from the denial of the original' post-plea motion." Def. Br. 14 (quoting *People v. Feldman*, 409 Ill. App. 3d 1124, 1127 (5th Dist. 2011)). As this Court has recognized, Rule 604(d) *already* provides the trial court an opportunity to correct any potential errors prior to the filing of an appeal. *Easton*, 2018 IL 122187, ¶ 29; *Wilk*, 124 Ill. 2d at 104; *see also* *People v. Wallace*, 143 Ill. 2d 59, 61 (1991) (Rule 604(d) "motion to reconsider the sentence gives the trial court the necessary opportunity to review the appropriateness of the sentence imposed and correct any errors made"). A motion to reconsider the denial a motion to reconsider would be redundant and would thwart the Court's stated interests in preventing abuse and promoting finality of judgments. *See Sears v. Sears*, 85 Ill. 2d 253, 259 (1981) ("justice is not served" by permitting successive postjudgment motions that only "tend to prolong" proceedings); *see also infra* Section C. To the extent that the appellate court in *Feldman*, 409 Ill. App. 3d 1124, reached a different conclusion, *Feldman* was wrongly decided.

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Similarly misplaced is defendant's argument that his interpretation "infringes least on a defendant's constitutional right to a direct appeal" and "minimizes the disruption of the right to a direct appeal." Def. Br. 13-14. On the contrary, a holding that the filing of a motion to reconsider the denial of a motion to reconsider tolls the time to file a notice of appeal would merely delay a defendant's exercise of his appeal right, disrupting rather than protecting that right.

Indeed, this Court rejected similar arguments in *Wilk*. *Wilk* addressed several cases in which the defendants' appeals were dismissed because they filed notices of appeal without having first filed a motion that was required by Rule 604(d). 124 Ill.2d at 99-100. The appellate court had carved out various exceptions that permitted appeals despite a defendant's failure to comply with Rule 604(d), but *Wilk* rejected them because they "attache[d] no consequences to the ignoring of the requirements of the rule." *Id.* at 106-07. In other words, the exceptions that the appellate court had identified as necessary to protect the right to an appeal did not trump the plain language of this Court's Rules.

And, here, unlike in *Wilk*, defendant maintained the opportunity for an appeal and new 604(d) proceedings on remand. Where counsel fails to file a timely Rule 604(d) motion but files a notice of appeal, as occurred in *Wilk*, a defendant loses the opportunity to pursue a direct appeal. But here, counsel filed a timely Rule 604(d) motion but failed to file a Rule 604(d) certification,

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and defendant could have filed a notice of appeal during the 30 days following the trial court's denial of that motion. The result would have been a remand for the filing of a Rule 604(d) certification, the opportunity to file a new Rule 604(d) motion, and a new motion hearing. *People v. Lindsay*, 239 Ill. 2d 522, 531 (2011). In other words, unlike in *Wilk*, until the time to file a notice of appeal expired, defendant maintained the ability to obtain an appeal and new Rule 604(d) proceedings. Thus, a holding that defendant's filing of the motion to reconsider the denial of his Rule 604(d) motion to reconsider is unnecessary to protect defendant's right to appeal.

In sum, the plain language of Rules 604 and 606 reflects this Court's determination with respect to what is required to pursue a direct appeal from a guilty plea, in order to best serve the Court's announced purposes of providing the trial court an opportunity to correct any errors, preventing abuses by defendants, and ensuring timely completion of proceedings. *Wilk*, 124 Ill.2d at 103. This Court should decline defendant's invitation to deviate from that established procedure.

C. Defendant's interpretation of the Rules is inconsistent with this Court's precedent holding that successive post-judgment motions do not toll the time to appeal.

Defendant recognizes the "rule against successive and repetitive post-judgment motions detailed in *Sears*." Def. Br. 14. In *Sears*, this Court held that a second post-judgment motion did not extend the time for filing a notice of appeal, explaining that there "must be finality, a time when the case in the

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trial court is really over and the loser must appeal or give up." 85 Ill. 2d at 259. Thus, as defendant acknowledges, "a trial court cannot permit a defendant to file a postjudgment motion directed against the final judgment, rule on it, and then rule on a motion to reconsider the denial of that posttrial motion and thereby extend its jurisdiction and the time for appeal." *People v. Miraglia*, 323 Ill. App. 3d 199, 205 (2d Dist. 2001). Defendant fails to explain why the rule does not apply here.

Defendant argues that *Sears* was concerned that a party could "return to the trial court indefinitely" and that allowing only a second post-sentencing motion to reconsider provides "a specific endpoint." Def. Br. 14. But *Sears* itself involved a second post-judgment motion, and the Court warned that allowing even one successive post-judgment motion would "make the first motion a rehearsal for the real thing the next month." *Id.* Thus, defendant fails to distinguish *Sears*.

Defendant also argues that his motion to reconsider the denial of the motion to reconsider sentence was not akin to the successive post-judgment motion at issue *Miraglia*. In his view, adding a motion to reconsider the denial of a Rule 604(d) motion to reconsider sentence "does not run afoul of the general rule against successive post-judgment motions" set forth in *Miraglia* because after a trial a defendant can file a notice of appeal without filing a post-sentencing motion, but a motion to reconsider is mandated after a guilty plea. Def. Br. 13. Defendant is incorrect.

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First, even where a post-sentencing motion is required by Rule 604(d), it remains a post-judgment motion. Defendant argues that because a defendant may not appeal his sentence following a guilty plea without first filing a Rule 604(d) motion, "'it is the order denying that motion that is the final judgment.'" Def. Br. 14 (quoting *Feldman*, 409 Ill. App. 3d at 1127). On the contrary, "[i]n a criminal case, the entry of a sentence constitutes the final judgment in the case," whether that sentence is entered pursuant to a finding of guilt or a guilty plea. *People v. Salem*, 2016 IL 118693, ¶ 12; *see also* 725 ILCS 5/102-14 ("'Judgment' means an adjudication by the court that the defendant is guilty or not guilty and if the adjudication is that the defendant is guilty it includes the sentence pronounced by the court."). That this Court has instituted procedural steps that must be followed for a defendant to effectuate his right to appeal the entry of a sentence following a guilty plea does not mean that the entry of the sentence is not a final judgment. This Court has repeatedly confirmed that Rule 604(d) motions are post-judgment motions. *See People v. Brooks*, 233 Ill. 2d 146, 155 (2009) (discussing the "postjudgment motion requirement of Rule 604(d)); *People v. Flowers*, 208 Ill. 2d 291, 303 (2004) (discussing "Rule 604(d), which governs postjudgment motions in cases such as the one before us where the defendant has pleaded guilty"). Thus, a holding that the filing of a motion to reconsider the denial of a Rule 604(d) motion tolls the time to appeal would run afoul of the rule against successive post-judgment motions.

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Second, that the Rules require a post-judgment motion prior to an appeal when the defendant pleads guilty does not counsel in favor of a different result because the Rules contemplate a post-judgment motion in every case to preserve issues for appeal. While not jurisdictional, post-trial and post-sentencing motions are necessary to preserve issues for appeal. A defendant must allege an error in a post-trial motion to preserve it. *People v. Reese*, 2017 IL 120011, ¶ 60. And to preserve a sentencing claim for appeal a defendant must raise the issue in a post-sentencing motion. *People v. Fort*, 2017 IL 118966, ¶ 18. So, while no rule explicitly mandates a motion to reconsider following a guilty verdict at trial, a defendant must still file such a motion before raising any error on appeal or the alleged error will be deemed forfeited. The same applies to Rule 604(d) motions: "Upon appeal any issue not raised by the defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived." Ill. S. Ct. R. 604(d); *see also People v. Sophanavong*, 2020 IL 124337, ¶ 25.

In sum, a motion to reconsider the denial of a Rule 604(d) motion to reconsider sentence is a successive post-sentencing motion, and, as such, it does not toll the time to appeal. Defendant's argument otherwise cannot be reconciled with settled precedent.

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D. Defendants whose attorneys fail to comply with Rules 604 and 606 have available remedies.

A defendant whose attorney fails to comply with Rules 604 and 606 is not without remedy. Depending on counsel's failures, the available remedies may include a direct appeal, postconviction proceedings, and supervisory relief from this Court. Multiple such remedies were available to defendant here.

As noted above, if counsel files a timely Rule 604(d) motion but fails to file a Rule 604(d) certificate, the defendant can file a notice of appeal and receive a remand for the filing of a Rule 604(d) certificate, the opportunity to file a new Rule 604(d) motion, and a new motion hearing. *Lindsay*, 239 Ill. 2d at 531. Defendant could have availed himself of this remedy.

If counsel's failure to comply with Rules 604 and 606 deprives a defendant of a direct appeal, the defendant has an available remedy in the Post-Conviction Hearing Act, 725 ILCS 5/122-1, *et seq*. *Wilk* illustrates this point. In *Wilk*, the defendant, "through no fault of his, [was] deprived of a right to be heard in the appellate court," as a result of his counsel's failure to file a motion required by Rule 604(d). 124 Ill. 2d at 106. Although this Court declined to depart from the plain language of the Rules by creating exceptions that would permit an appeal despite non-compliance with Rule 604(d), the Court also explained that the "appropriate remedy for these defendants lies in our Post-Conviction Hearing Act," which "encompasses the right to effective assistance of counsel." *Id.* at 107; *see also Brooks*, 233 Ill. 2d

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at 157 (holding that petitioner was entitled to proceed to second stage of postconviction proceedings on claim that counsel was ineffective for failing move to withdraw guilty plea); *People v. Edwards*, 197 Ill. 2d 239, 257-58 (2001) (same).

The Court reiterated this principle in *Flowers*. There, the defendant filed a *pro se* notice of appeal without filing a motion that was required by Rule 604(d), and, as a result of the non-compliance with Rule 604(d), the appeal was dismissed. *Id.* at 296. Defendant then filed a postconviction petition, appointed counsel filed a Rule 604(d) motion, the motion was denied, and the defendant appealed. 208 Ill. 2d at 296-97. This Court held that the trial court was without jurisdiction to consider the Rule 604(d) motion because it was not filed within 30 days of sentence being imposed. *Id.* at 302-03. But the Court also made clear that the defendant "was not without an alternate remedy," because he "was entitled to seek relief under the Post-Conviction Hearing Act." *Id.* at 306.

Alternatively, a defendant could seek supervisory relief from this Court, which "has general administrative and supervisory authority under section 16 of the judicial article of the Illinois Constitution," *People v. Relerford*, 2017 IL 121094, ¶ 76 (citing Ill. Const. 1970, art. VI, § 16), to address his counsel's non-compliance with Rules 604 and 606, *see People v. Heddins*, 66 Ill. 2d 404, 406-07 (1977) (invoking supervisory authority in Rule 604 context). Thus, there is no need to adopt defendant's distorted

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construction of this Court's Rules, for there exist alternative remedies which defendants may pursue if they or their attorneys fail to comply with Rules 604(d) and Rule 606(b). As this Court stressed in *Flowers*, these sorts of missteps "warrant deviation from the clear mandates" of these Rules. 208 Ill. 2d at 306.

II. Alternatively, Defendant Abandoned the Successive Post-Sentencing Motion.

Not only did defendant's successive post-sentencing motion not toll the time for taking an appeal, because defendant did not bring the motion to the trial court's attention or obtain a ruling on it, it should be presumed abandoned. *See Walls*, 2021 IL App (4th) 200147-U, ¶¶ 25-27 (citing *People v. Van Hee*, 305 Ill. App. 3d 333, 335 (2d Dist. 1999)); *see also People v. Kelley*, 237 Ill. App. 3d 829, 831 (3d Dist. 1992) ("Unless a motion is brought to the attention of the trial judge and the judge is requested to rule on it, the motion is not effectively made," and "when no ruling has been made on a motion, it is presumed to have been abandoned unless the circumstances indicate otherwise"). That the trial court sua sponte sought to resurrect the motion over fourteen years later does not mean it had not been abandoned in the first place. Accordingly, even if a motion to reconsider the denial of a Rule 604(d) motion to reconsider sentence could in some circumstances toll the time to appeal, defendant's motion did not have that effect because he abandoned it.

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CONCLUSION

This Court should affirm the judgment of the appellate court.[3]

June 7, 2022

Respectfully submitted,

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[3] Because the appellate court lacked subject matter jurisdiction, it did not have authority to vacate the trial court's order striking the collateral proceedings. Thus, if this Court affirms the appellate court's decision vacating the trial court's judgment, it should indicate that on remand the trial court should reinstate the collateral proceedings.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 21 pages.

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STATE OF ILLINOIS)
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COUNTY OF COOK)

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 7, 2022, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was at the same time (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

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