

No. 127965

IN THE

SUPREME COURT OF ILLINOIS

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

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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E-FILED
4/11/2022 2:50 PM
CYNTHIA A. GRANT
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ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

Itasha¹ Walls pled guilty to two counts of second degree murder and one count of aggravated battery with a firearm. The trial court sentenced him to serve three terms of 15 years in prison. Itasha filed a direct appeal from the judgment of the circuit court. No issue was raised challenging the charging instrument. The Appellate Court vacated the trial court's judgment and remanded for collateral proceedings. Itasha petitioned this Court for leave to appeal, and this Court granted his petition.

¹Mr. Walls' name is properly spelled "Itassa Walls." However, because this case is captioned as "Itasha Walls," the "Itasha" spelling will be used in this brief to avoid confusion.

ISSUE PRESENTED FOR REVIEW

Does the filing of a motion to reconsider the denial of a post-plea motion required by Rule 604(d) toll the deadline for filing a notice of appeal?

STATUTES AND RULES INVOLVED

Ill. Sup. Ct. Rule 604(d)(2022):

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.

No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending.

The motion shall be in writing and shall state the grounds therefor. When the motion is based on facts that do not appear of record it shall be supported by affidavit unless the defendant is filing the motion *pro se* from a correctional institution, in which case the defendant may submit, in lieu of an affidavit, a certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109). The motion shall be presented promptly to the trial judge by whom the defendant was sentenced, and if that judge is then not sitting in the court in which the judgment was entered, then to the chief judge of the circuit, or to such other judge as the chief judge shall designate. The trial court shall then determine whether the defendant is represented by counsel, and if the defendant is indigent and desires counsel, the trial court shall appoint counsel.

If the defendant is indigent, the trial court shall order a copy of the transcript as provided in Rule 402(e) be furnished the defendant without cost. 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 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. The certificate of counsel shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article VI Forms Appendix.

Ill. Sup. Ct. Rule 606(b) (2022):

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.

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.

A new notice of appeal must be filed within 30 days following the entry of the order disposing of all timely postjudgment motions. Within 5 days of its being so filed a copy of the notice of appeal or an amendment of the notice of appeal shall be transmitted by the clerk of the circuit court to the clerk of the court to which the appeal is taken. Except as provided in paragraph (c) below, and in Rule 604(d), no appeal may be taken from a trial court to a reviewing court after the expiration of 30 days from the entry of the order or judgment from which the appeal is taken. The clerk of the appellate court shall notify any party whose appeal has been dismissed under this rule.

STATEMENT OF FACTS

Darnisha Walls was pregnant and asleep in her home with her husband, Ontario, and their two young children when twelve gunshots were fired into her home. (SUP3 R 294-95).

One of the bullets went through her bedroom window:



(SUP3 R 304; SUP3 E 630). A bullet struck Darnisha in her shoulder.(SUP3 R 295). Before she left for the hospital, Darnisha saw Michael Cummings' white Chevy Caprice outside her home with four people inside of it. (SUP3 R 296-97). After that shooting, Cummings and his associates continued to threaten the Walls family and drive by their home. (SUP3 R 293, 317, 320, 335, 340-42, 403-05). Finally, Darnisha's husband, Ontario, and his little brother, Itasha, shot Mike Cummings and his associates, Kendrix Morgan and Clarence Perkins, because Itasha believed Cummings was pointing a gun at him. (SUP3 R 351-52). Cummings suffered minor injuries, but Morgan and Perkins died. (SUP3 R 120,156, 157).

Itasha pled guilty to the second-degree murders of Morgan and Perkins, and the aggravated battery with a firearm of Cummings. (SUP2 R 56-77). Ontario Walls was found guilty of the same offenses by a jury. (SUP3 R 539). The judge sentenced both brothers to three consecutive sentences of fifteen years in prison. (R 138-39). After extensive delays in the litigation of his motion to reconsider sentences, Itasha Walls appealed those sentences. (C 445, 462).

Drive-by Shooting at the Walls' Home and Cummings' Threats

In November of 2003, Ontario Walls lived with his wife, kids, and two little brothers, Itasha and Karaka. (SUP3 R 331, 392). Mrycid "Benny" McKinney was their neighbor. (SUP3 R 393). On November 19, 2003, they were all outside when Kendrix Morgan and Michael Cummings arrived at Ontario's house in a white Caprice, and Cummings got into a fight with Benny. (SUP3 R 122, 331-32, 393). Ontario broke up the fight. (SUP3 R 394). Cummings and Kendrix Morgan left. (SUP3 R 395). They came back around ten minutes later with their older brothers, Jilla and Brion. (SUP3 R 122, 314-15, 333, 395). Then there was a second fist-fight, between Itasha and Kendrix. (SUP3 R 122, 396). After that fight, Cummings and his associates got back into his Caprice and threatened that they were going to shoot up the Walls' home. (SUP3 R 293, 317, 335, 396-97). Then, just a few hours later, a dozen or more shots were fired into the Walls' home. (SUP3 R 124, 294, 397). Ontario's pregnant wife, Darnisha, was shot in the shoulder. (SUP3 R 295).

When Darnisha went outside right after the shooting, she saw Michael Cummings' Caprice across the street from the Walls' home, and she could see four people in the car. (SUP3 R 297). Ontario also saw the white Caprice through the window. (SUP3 R 399-400). Darnisha and another person who was in the house, Cris, told the police that Cummings and his associates may have been the shooters. (SUP3 R 428-29). And yet, no arrests were made. (SUP3 R 429).

As there were no arrests, in the days following the shooting, Cummings and his associates continued to threaten the Walls family and drive past their home. Benny saw the white Caprice drive by the Walls' home and slow down at least every other day. (SUP3 R 320). Itasha saw it drive by three or four times. (SUP3 R 341). Ontario also saw it drive by. (SUP3 R 405). Cummings stopped in front of the Walls' house and threatened to kill Itasha. (SUP3 R 343). Brion Bennet also threatened to kill him. (SUP3 R 340-41). Cris DiBello told Ontario that

Clarence Perkins was also threatening that he was going to shut Ontario's street down, which Ontario took as a threat of violence. (SUP3 R 403). So, Ontario obtained firearms from his neighbor to protect himself and his family. (SUP3 R 414).

Another Shooting and Itasha's Acceptance of Responsibility

On November 26, 2003, Itasha and Ontario drove Itasha's girlfriend to school. (SUP3 R 344, 407). On the way there, they saw Cummings' Caprice. (SUP3 R 344-45). Itasha and Ontario armed themselves because they were afraid after all the threats, but they wanted to make peace. (SUP3 R 347, 410). As they approached Cummings' Caprice, Itasha saw Cummings reaching and pointing toward him from the driver's seat, and it looked like he had a gun in his hand. (SUP3 R 350). He could also see Kendrix Morgan fumbling with something. (SUP3 R 351). In that moment, Itasha thought that he was going to be hurt or killed, so he started firing shots. (SUP R 351). Then Ontario started shooting to protect himself and Itasha, and the Caprice drove away. (SUP R 351-52, 413).

Itasha was then interviewed by Detective Jim Graham. (SUP3 R 362). In that interview, he admitted that he and Ontario had shot into the Caprice. (SUP3 R 364). Itasha initially told the police that Ontario had shot first, but at Ontario's trial he admitted under oath that he had been the first one to fire. (SUP3 R 365). After Ontario's trial, Itasha pled guilty to two counts of second degree murder, and one count of aggravated battery with a firearm. (SUP2 R 56-77).²

The circuit court sentenced Itasha and Ontario at the same time for the same offenses as part of the same hearing on August 31, 2005. (R 135). At that hearing, the State highlighted the differences in Itasha and Ontario's backgrounds, pointing out that Itasha had only received supervision for a single assault case, whereas Ontario was a convicted felon with multiple

² Itasha also initially pled guilty to aggravated discharge of a firearm, but he was never sentenced on that count because the circuit court correctly concluded that one-act, one-crime principles barred it from imposing a sentence for that offense. (R 112)

prior convictions who was on probation at the time of the shooting. (R 121-22, 132). In mitigation, Itasha's attorney pointed out the fact that Itasha had expressed remorse early in the proceedings, and had been honest with the pre-sentencing report author. (R 128-29). Counsel also pointed out statutory mitigating factors, like the facts that there was strong provocation, that there were substantial grounds tending to excuse Itasha's conduct, and that these circumstances would be unlikely to recur. (R 131). Itasha apologized to both the court and the victims' families in allocution. (R 135). At the time of the offenses, Itasha was only 19-years-old, and Ontario was 22-years-old. (R 8).

In sentencing Itasha and Ontario, the sentencing court said it considered both the information presented at Ontario's trial and the information presented at the sentencing hearing. (R 135). It acknowledged a "slight" difference in Ontario and Itasha's criminal backgrounds, but said that the "conduct in this case under the law warrant that Ontario Walls and Itasha Walls receive the same sentence in connection with this case." (R 136-37). The court then explained that it believed it was justified in ordering that all of the sentences in this case run consecutive to one another because "the nature and circumstances of the offense, obviously more so than the history and character of the offenders, required [the court] to protect the public from further criminal conduct." (R 138). The court then sentenced both Itasha and Ontario to serve three consecutive fifteen-year terms in prison. (R 138-39).

Prolonged Litigation of Itasha's Post-Plea and Post-Judgment Motions

Itasha's attorney initially filed a timely post-plea motion to reconsider Itasha's sentence on September 30, 2005. (C 96). However, counsel did not file a 604(d) certificate. (R 149-50; C 100). On October 14, 2005, the circuit court preliminarily denied the post-plea motion, but noted that a Rule 604(d) certificate had not been filed, and indicated that counsel may be required to file such a certificate before a notice of appeal could be filed. (R 149-50). Counsel then filed a motion to reconsider the denial of the post-plea motion on November 14, 2005. (C 100).

In that motion, counsel argued that the post-plea motion was improperly denied because no Rule 604(d) certificate had been filed. (C 100). Counsel explained that it was not possible to file a certificate, because counsel had not had an opportunity to review the guilty plea transcript. (C 100).

Then, for nearly five years, nothing happened. On April 2, 2010, Itasha filed a *pro se* petition for relief from judgment. (C 112). In 2011, counsel was appointed to represent Itasha, but for a few more years, nothing happened other than occasional “status” dates. (C 18-19). Appointed counsel eventually filed an “Amended Petition to Vacate or Redress a Void Sentence” on February 25, 2019. (C 19) And then, finally, on July 11, 2019, the circuit court judge reviewed the file and discovered that Itasha’s motion to reconsider the denial of the post-plea motion had never been ruled on, and that a Rule 604(d) certificate had never been filed. (C 285). The circuit court judge ordered appointed counsel to comply with Rule 604(d). (R 173). Appointed counsel filed various amended post-plea motions, but the final version was filed on February 4, 2020. (C 399). Much of the motion focused on an argument that the sentencing judge erred in ordering mandatorily consecutive sentences. (C 409-23). The circuit court rejected that argument, pointing out that the trial court actually imposed permissive consecutive sentences in this case. (R 231-32).

There were also other arguments in the final version of the amended post-plea motion. Counsel argued that the sentencing court had overlooked a host of mitigating factors, including the facts that: (1) Itasha had no meaningful criminal record, (2) Itasha committed the charged offenses after strong provocation, (3) there were substantial grounds tending to excuse Itasha’s criminal conduct that failed to establish a defense, and (4) Itasha was only 19 at the time of the offenses. (C 414-15, 421). Counsel also asserted that Itasha’s sentences violated the proportionate penalties clause of the state constitution, that they were excessive, and that Itasha’s sentence was disproportionate in light of his co-defendant’s sentence. (C 414, 424). The circuit court denied the amended post-plea motion on March 4, 2020. (R 232).

Appellate Proceedings

Itasha filed a notice of appeal on March 6, 2020. (C 445). The Office of the State Appellate Defender then filed an amended notice of appeal on March 27, 2020. (C 462). In that appeal, Itasha argued that his sentences were excessive, a violation of the proportionate penalties clause, improperly ordered to run consecutively, and impermissibly disparate to those of his co-defendant. *People v. Walls*, 2021 IL App (4th) 200147-U, ¶ 3.

But then, without requesting briefing on the issue, the Fourth District of the Appellate Court determined that it was “precluded from considering the merits of a direct appeal from the underlying guilty plea proceedings” because the motion to reconsider the denial of the post-plea motion did not toll the 30-day period within which Itasha was permitted to appeal. *Walls*, 2021 IL App (4th) 200147-U, ¶¶ 16, 24. It found that the circuit court lacked authority to order additional proceedings under Rule 604(d), vacated the order striking the collateral proceedings, and remanded for further proceedings on the collateral issues presented in the circuit court. *Id.* at ¶ 28. Itasha petitioned this Court for leave to appeal. This Court granted that petition.

ARGUMENT

I. The filing of a motion to reconsider the denial of a post-plea motion required by Rule 604(d) tolls the deadline for filing a notice of appeal.

Itasha Walls pled guilty almost 17 years ago, but his constitutional right to a direct appeal still has not been realized. Most recently, the consideration of the merits of his direct appeal issues was thwarted by the Fourth District’s misinterpretation of Illinois Supreme Court Rules 604(d) and 606(b). Over ten years ago, the Fifth District held in *People v. Feldman*, 409 Ill. App. 3d 1124, 1127 (5th Dist. 2011), that a notice of appeal filed within 30 days of the denial of a motion to reconsider the denial of a post-plea motion is timely filed. But, in Itasha’s case, the Fourth District disagreed, holding that it was “precluded from considering the merits of a direct appeal from the underlying guilty plea proceedings” because Itasha’s motion to reconsider the denial of the post-plea motion did not toll the 30-day period within which Itasha was permitted to appeal. *People v. Walls*, 2021 IL App (4th) 200147-U, ¶¶ 16, 24. This departure from *Feldman* is based on a faulty interpretation of Illinois Supreme Court Rules 604(d) and 606(b). For that reason, and because the motion to reconsider the denial of the post-plea motion was not abandoned, this Court should reverse the Fourth District’s decision and remand for the Appellate Court to rule on the merits of the issues Itasha raised in his direct appeal.

“Like the interpretation of a statute, the interpretation of a supreme court rule is a question of law that [this Court] review[s] *de novo*.” *People v. Campbell*, 224 Ill. 2d 80, 84 (2006), as modified on denial of reh’g (Jan. 22, 2007). Additionally, whether Rule 604(d) was properly applied is also reviewed *de novo*. *People v. Johnson*, 2019 IL 122956, ¶ 22. The same principles that govern statutory interpretation also govern the interpretation of Supreme Court Rules. *Campbell*, 224 Ill. 2d at 84. This Court “will apply clear and unambiguous language of a rule as it is written, without resorting to any further tools of construction” when possible. *Id.*

The plain language of Illinois Supreme Court Rules 604(d) and 606(b) supports the Fifth District's conclusion in *Feldman*. Rule 604(d) does not say that a timely notice of appeal must be filed within 30 days of the denial of the post-plea motion. Instead, it says, "If the [post-plea] 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." Ill. Sup. Ct. Rule 604(d) (2022). Rather than adopting a strict 30-day time limit, Rule 604(d) by its own language adopts the procedures laid out in Rule 606(b). Illinois Supreme Court Rule 606(b) says:

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.

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.

A new notice of appeal must be filed within 30 days following the entry of the order disposing of all timely postjudgment motions. Within 5 days of its being so filed a copy of the notice of appeal or an amendment of the notice of appeal shall be transmitted by the clerk of the circuit court to the clerk of the court to which the appeal is taken. Except as provided in paragraph (c) below, and in Rule 604(d), no appeal may be taken from a trial court to a reviewing court after the expiration of 30 days from the entry of the order or judgment from which the appeal is taken. The clerk of the appellate court shall notify any party whose appeal has been dismissed under this rule."

Ill. Sup. Ct. Rule 606(b) (2022).

Read together, these rules 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."

Ill. Sup. Ct. Rule 604(d) (2022); Ill. Sup. Ct. Rule 606(b) (2022). More simply, to appeal after

a guilty plea, the defendant must file a notice of appeal either within 30 days of the denial of the post-plea motion, or alternatively, within 30 days of the denial of the Rule 606(b) motion to reconsider the ruling on the Rule 604(d) post-plea motion, should a Rule 606(b) motion be filed. And, if a Rule 606(b) motion is filed, any notice of appeal filed before that motion is disposed of must be stricken. Ill. Sup. Ct. Rule 606(b) (2022).

Notably, this interpretation does not conflict with the general rule against successive post-conviction motions as explained in *People v. Miraglia*, 323 Ill. App. 3d 199, 205 (2d Dist. 2001). After a trial, such as in *Miraglia*, the final judgment is the sentence pronounced in open court and a notice of appeal may be filed within 30 days of the sentencing under Illinois Supreme Court Rule 606(b). See *People v. Allen*, 71 Ill. 2d 378, 381 (1978). No Rule 604(d) motions are filed after a trial, so Rule 604(d) does not enter into the analysis. But, in a guilty plea case, the defendant may not simply file a notice of appeal within 30 days of sentencing. Because Rule 604(d) applies to guilty pleas, the defendant must first file a Rule 604(d) post-plea motion to withdraw the guilty plea or to reconsider the sentence, and then appeal the denial of that post-plea motion. As the Fifth District recognized in *Feldman*, 409 Ill. 3d at 1127, the order denying the post-plea motion is a required part of the final judgment in guilty plea cases. The defendant may not appeal until after the judge rules on the post-plea motion. So, the denial of the post-plea motion should be considered the “final judgment” for purposes of the general rule against successive post-judgment motions.

This is not the only reason why this Court should adopt the *Feldman* interpretation of the rules. The *Feldman* interpretation is also the interpretation that infringes least on a defendant’s constitutional right to a direct appeal. The right to a direct appeal of a criminal conviction is a fundamental right. *People v. Swanson*, 276 Ill. App. 3d 130, 132 (2d Dist. 1995); Ill. Const. 1970, art. 6, § 6. Regulations limiting fundamental constitutional rights must be narrowly tailored. *People v. Kaeding*, 98 Ill. 2d 237, 245 (1983), see also *In re J.W.*, 204 Ill. 2d 50, 78 (2003) (holding that conditions of probation requiring a waiver of constitutional rights

must be narrowly drawn). Interpreting the rules in a way that minimizes the disruption of the right to a direct appeal results in a more narrowly tailored, and thus preferable regulation of the right to appeal.

This narrow tailoring does not undermine the rationale for the rule against successive and repetitive post-judgment motions detailed in *Sears v. Sears*, 85 Ill. 2d 253, 259 (1981). In *Sears*, this Court explained that a losing litigant should not be able to return to the trial court indefinitely, “hoping for a change of heart or a more sympathetic judge.” *Sears*, 85 Ill. 2d at 259. There must be finality in a case—a point at which the unsuccessful party must appeal or give up. *Id.*, see also, *Miraglia*, 323 Ill. App. 3d at 205-06. The *Feldman* interpretation of Rules 604(d) and 606(b) provides such a specific endpoint. Under that interpretation, the notice of appeal must be filed within 30 days of the denial of the Rule 604(d) post-plea motion, or if a Rule 606(b) post-judgment motion is filed, within 30 days of the denial of that Rule 606(b) post-judgment motion. As the *Feldman* court explained, “because a defendant who pleads guilty...may not file an appeal without first filing a [post-plea motion], it is the order denying that motion that is the final judgment. Accordingly, a motion to reconsider that denial does not run afoul of the general rule against successive postjudgment motions” pronounced in *Miraglia*, 323 Ill. App.3d at 257 [.]” *Feldman*, 409 Ill. App. 3d at 1127.

Judicial economy also favors the *Feldman* interpretation of the rules. As the *Feldman* court recognized, a Rule 606(b) post-judgment motion filed after the denial of a Rule 604(d) post-plea motion “provides the trial court with the opportunity to correct any errors that might have resulted from the denial of the original” post-plea motion. *Feldman*, 409 Ill. App. 3d at 1127. In fact, that is what occurred in Itasha’s case. The post-plea motion was inherently flawed because it was not accompanied by a Rule 604(d) certificate. (R 149-50). Itasha argued in his Rule 606(b) post-judgment motion that the ruling on his post-plea motion was fundamentally flawed because of the lack of a certificate and the fact that counsel had not had

an opportunity to review the guilty plea transcript. (C 100). The circuit court was then able to address this issue by appointing new counsel and directing appointed counsel to comply with the requirements of Rule 604(d). (R 173). The *Feldman* interpretation empowers litigants to raise these issues in the trial courts while simultaneously empowering the trial courts to address these issues without going through the expense of an appeal. As such, this Court should adopt the Fifth District’s *Feldman* interpretation of Rules 604(d) and 606(b).

Finally, if this Court adopts the *Feldman* interpretation of the rules, the “abandonment” doctrine does not bar the Appellate Court from addressing Itasha’s direct appeal claims. The Fourth District noted below that, when “no ruling has been made on a motion, the motion is presumed to have been abandoned absent circumstances indicating otherwise.” *Walls*, 2021 IL App (4th) 200147-U, ¶ 25, citing *People v. Van Hee*, 305 Ill. App. 3d 333, 335 (2d Dist 1999). However, while it took longer than it should have, the circuit court did ultimately rule on Itasha’s Rule 606(b) post-judgment motion. One of the arguments in the post-judgment motion was that the court’s ruling on the post-plea motion was erroneous because no Rule 604(d) certificate had been filed. (C 100). The circuit court discovered the Rule 606(b) post-judgment motion on July 11, 2019, and found that Itasha was correct, and that no Rule 604(d) certificate had been filed with the original Rule 604(d) post-plea motion. (C 285). The circuit court then did precisely what it should have done upon granting the post-judgment motion—it ordered appointed counsel to comply with Rule 604(d) and it allowed counsel to file an amended post-plea motion with a proper certificate. (C 399; R 173). Because the circuit court acted, albeit belatedly, on Itasha’s Rule 606(b) motion, *Van Hee* is easily distinguished and the abandonment doctrine does not apply. As such, this Court should adopt the *Feldman* interpretation of Rules 604(d) and 606(b), and remand to the Appellate Court for that Court to address the merits of Itasha’s direct appeal.

CONCLUSION

For the foregoing reasons, Itasha Walls respectfully requests that this Court reverse the decision of the Fourth District of the Appellate Court, and remand with directions for the Appellate Court to rule on the merits of the direct appeal claims Itasha raised in his appeal.

Respectfully submitted,

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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, the certificate of service, and those matters to be appended to the brief under Rule 342, is sixteen pages.

/s/Roxanna A. Mason
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APPENDIX TO THE BRIEF**Itasha Walls, No. 127965**

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FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 4-20-0147Circuit Court No: 2003CF001233Trial Judge: MADONIA

v.

ITASHA WALLS

Defendant/Respondent

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 FOURTH JUDICIAL DISTRICT
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 SANGAMON COUNTY, ILLINOIS

STATE OF ILLINOIS

Plaintiff/Petitioner

Reviewing Court No: 4-20-0147Circuit Court No: 2003CF001233Trial Judge: MADONIA

v.

ITASHA WALLS

Defendant/Respondent

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STATE OF ILLINOIS

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v.

ITASHA WALLS

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IN THE CIRCUIT COURT OF SANGAMON COUNTY, ILLINOIS
SEVENTH JUDICIAL CIRCUIT

Date of Sentence: 08/31/05
Defendant DOB: 11/08/84
Victim DOB: 03/03/82
and 11/21/86

PEOPLE OF THE STATE OF ILLINOIS)

VS.)

CASE NO. 03-CF-1233

ITASHA WALLS,
Defendant)

FILED

JUDGMENT-SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS SEP 07 2005 CRI.-2

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below:

IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
IX	Second Degree Murder	11/26/03	720 ILCS 5/9-2	F/1	15 Yrs. 0 Mos.	2 Yrs.

and said sentence shall run consecutive to the sentence imposed on:

X	Second Degree Murder	11/26/03	720 ILCS 5/9-2	F/1	15 Yrs. 0 Mos.	2 Yrs.
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and said sentence shall run consecutive to the sentence imposed on:

VII	Aggravated Battery with a Firearm	11/26/03	720 ILCS 5/12-4.2	F/X	15 Yrs. 0 Mos.	3 Yrs.
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The Court finds that the defendant is:

☐ Convicted of a Class _____ offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-5-3(c)(8).

The Court further finds that the defendant is entitled to receive credit for time actually served in custody of 645 days as of the date of this order from 12/01/03 through 08/31/05.

☐ The Court further finds that the conduct leading to conviction for the offense(s) enumerated in count(s) _____ resulted in great bodily harm to the victim (730 ILCS 5/3-6-3(a)(2)(iii)).

☐ The Court further finds that the defendant meets the eligibility requirements and is approved for placement in the Impact Incarceration Program. If the Department accepts the defendant and determines that the defendant has successfully completed the program, the sentence shall be reduced to time considered served upon certification to the Court by the Department that the defendant has successfully completed the program. Written consent is attached.

☐ The Court further finds that the offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance.

☐ IT IS FURTHER ORDERED that the sentence(s) imposed on count(s) _____ be (concurrent with)(consecutive to) the sentence imposed in Case Number _____ in the Circuit Court of _____ County.

☒ IT IS FURTHER ORDERED that the defendant serve 85% of said sentence in Count VII.

IT IS FURTHER ORDERED that the Clerk of the Court deliver a certified copy of this order to the Sheriff.

IT IS FURTHER ORDERED that the Sheriff take the defendant into custody and deliver him to the Department of Corrections which shall confine said defendant until expiration of his sentence or until he is otherwise released by operation of law.

☐ IT IS FURTHER ORDERED that _____

This order is (X) effective immediately.

DATE: 08/31/05

ENTER: _____

Honorable Stuart Shiffman

No. 4-20-0147

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT



PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	the Seventh Judicial Circuit,
Plaintiff-Appellee,	)	Sangamon County, Illinois
)	
-vs-	)	No. 03-CF-1233
)	
ITASHA WALLS,	)	Honorable
	)	John Madonia,
Defendant-Appellant.	)	Judge Presiding.

AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Fourth Judicial District:

Appellant(s) Name:	Mr. Itasha Walls
Appellant's Address:	Stateville Correctional Center P.O. Box 112 Joliet, IL 60434
Appellant(s) Attorney:	Office of the State Appellate Defender
Address:	400 West Monroe Street, Suite 303 Springfield, IL 62704
Offense of which convicted:	Two counts of Second Degree Murder, Aggravated Battery with a Firearm, Aggravated Discharge of a Firearm
Date of Judgment or Order:	March 4, 2020
Sentence:	Three terms of 15 years in prison
Nature of Order Appealed:	Conviction, Sentence, and Denial of Post-Plea Motion

CATHERINE K. HART
ARDC No. 6230973
Deputy Defender

COUNSEL FOR DEFENDANT-APPELLANT

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).

2021 IL App (4th) 200147-U

NO. 4-20-0147

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 15, 2021

Carla Bender

4th District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
ITASSA WALLS,	)	No. 03CF1233
Defendant-Appellant.)	
	)	Honorable
	)	John M. Madonia,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.

Presiding Justice Knecht and Justice Holder White concurred in the judgment.

ORDER

- ¶ 1 Held: The trial court erred by striking defendant's collateral proceedings and directing additional postplea proceedings pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb.1, 2005).
- ¶ 2 In July 2005, defendant, Itassa Walls, pleaded guilty to two counts of second degree murder (720 ILCS 5/9-2 (West 2002)) and one count of aggravated battery with a firearm (Id. § 12-4.2), and the trial court sentenced him to three consecutive 15-year prison terms. He filed a timely motion to reconsider his sentences, which the court denied in October 2005. After that denial, defendant's counsel filed a motion for rehearing of defendant's motion to reconsider on the basis that counsel did not comply with the attorney certification requirements of Illinois Supreme Court Rule 604(d) (eff. Feb. 1, 2005). The motion for rehearing was never addressed and, in 2010, defendant initiated collateral proceedings, during which he challenged his guilty pleas and

sentences.

¶ 3 During the collateral proceedings, the trial court “clarifie[d]” the status of the case, stating defendant’s original motion to reconsider remained “pending and unresolved *** due to the lack of a [Rule 604(d)] [c]ertificate of [c]ompliance.” It struck all filings associated with defendant’s collateral proceedings and directed defendant’s counsel to comply with Rule 604(d). Thereafter, defendant filed a third amended motion to reconsider his sentence and his counsel filed a Rule 604(d) certificate. Following a hearing, the court denied defendant’s third amended motion and he appeals, arguing his sentences were excessive, a violation of the proportionate penalties clause, improperly ordered to run consecutively, and impermissibly disparate to his codefendant’s sentences. We find the court erred by striking the parties’ filings in connection with defendant’s collateral proceedings and directing additional postplea proceedings. Accordingly, we vacate the trial court’s judgment and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 In December 2003, the State charged defendant with six counts of first degree murder (∓. § 9-1(a)(1), (a)(2)), one count of aggravated battery with a firearm (∓. § 12-4.2), and one count of aggravated discharge of a firearm (∓. § 24-1.2). The charges were based on allegations that defendant shot and killed Kendrix Morgan and Clarence Perkins and shot and injured Michael Cummings.

¶ 6 In July 2005, the State additionally charged defendant with two counts of second degree murder (∓. § 9-2). Defendant pleaded guilty to both of those counts, as well as aggravated battery with a firearm. His plea agreement with the State contained no agreement with respect to sentencing and in August 2005, the trial court sentenced defendant to three consecutive 15-year prison terms. (Although the record reflects defendant also pleaded guilty to aggravated discharge

of a firearm, the court ultimately entered no judgment of conviction, and imposed no sentence, for that offense.)

¶ 7 In September 2005, defendant filed a motion to reconsider his sentences, arguing, in part, that they were excessive, disregarded his potential for rehabilitation, and the trial court failed to give adequate weight to mitigating factors. On October 14, 2005, the court conducted a hearing and denied defendant's motion. On November 14, 2005, defendant filed a "Motion for Rehearing of Motion to Reconsider Sentence," asserting Illinois Supreme Court Rule 604(d) (eff. Feb. 1, 2005) required his counsel to review transcripts of his guilty plea hearing in connection with his motion to reconsider his sentence and file a certificate stating his compliance with the rule. Defendant maintained that at the time of the hearing on his motion to reconsider, his counsel "had not had an opportunity to review such transcript." Defendant asked the court to grant a rehearing of his motion to reconsider his sentence. The record fails to reflect the filing of a Rule 604(d) certificate at the time of either postplea motion.

¶ 8 Following defendant's filing in November 2005 of his motion for rehearing, no further proceedings were conducted in the case until April 2010, when defendant initiated collateral proceedings through the pro se filing of a "Motion to Vacate or Redress a Void Sentence," citing section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2008)). In June 2010, the trial court appointed attorney Mark Wycoff to represent defendant, and in July 2010, the State filed a motion to dismiss defendant's pro se filing. In November 2010, the court entered an order, granting a motion by Wycoff to withdraw from the case and appointing attorney Mike Costello to represent defendant. The court's docket entry indicates copies of its order were mailed to both Wycoff and Costello.

¶ 9 The record thereafter shows lengthy periods of inaction in the case. In May 2011,

several months after attorney Costello was appointed to represent defendant, a second docket entry indicates the court's November 2010 order appointing new counsel was mailed to Costello and defendant. Then, in June 2012, over a year later, a handwritten letter from defendant was filed, wherein he questioned the length of time the matter had been pending and asserted he had attempted to contact Costello on numerous occasions but received no response. More than two and a half years later, in February 2015, Costello filed a notice of hearing for "[s]tatus," which was set for March 2015. At that hearing and a subsequent one, the matter was continued. In August 2015, the court granted defendant's motion for leave to file an amended motion within 60 days. However, no amended motion was filed within 60 days and, in December 2015, the matter was "continued generally."

¶ 10 In August 2017, a telephone conference was held, and the matter was continued. In December 2017, the trial court again granted defendant 60 days to file an amended motion and the matter was continued to March 2018. The March 2018 setting was later canceled, and a docket entry states "[p]arties to reset." The next action in the case was defendant's filing of an "Amended Petition to Vacate or Redress a Void Sentence" filed in February 2019. In his amended petition, defendant cited section 2-1401 of the Code but also cited to the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 to 122-7 (West 2018)), alleging he suffered a substantial deprivation of constitutional rights. In April 2019, defendant filed a second amended petition. Again, his filing suggested he was seeking relief under both section 2-1401 of the Code and the Act. Defendant challenged his sentences as void and excessive, alleged his guilty pleas were the result of ineffective assistance of counsel, and argued he was denied due process of law because the State failed to give him the benefit of his bargain in connection with his plea agreement.

¶ 11 In July 2019, the State filed motions for clarification and to dismiss. It sought

clarification regarding whether defendant was proceeding under section 2-1401 of the Code or the Act, noting his previous filings referenced both types of relief. Alternatively, the State sought dismissal on the basis that defendant's second amended petition did not comply with the requirements of either section 2-1401 of the Code or the Act.

¶ 12 On July 11, 2019, the trial court conducted a hearing in the matter. It noted it had “undertaken some extensive analysis of the docket in [defendant’s] case and the pleadings that ha[d] been filed.” The court concluded the case was “still at the motion to reconsider sentencing stage because a [Rule 604(d)] certificate was never filed by [defendant’s] trial counsel.” According to the court, new postplea proceedings were required that complied with Rule 604(d) and defendant’s “motions involving section [2-]1401 to vacate a prior [j]udgment” were “meaningless.” It directed defendant’s counsel to comply with Rule 604(d) by properly consulting with defendant regarding his contentions of error, reviewing the “plea proceedings,” and filing “any amended motions.” The court made the following docket entry, memorializing its decision:

“[The] Court clarifies the status of this case for the parties. The Court finds that Defendant’s original Motion to Reconsider sentence remains pending and unresolved at the trial level due to the lack of a Certificate of Compliance filed pursuant to Supreme Court Rule 604. All [postplea] motions filed pursuant to [section 2-1401] are stricken as a result of the Court’s clarification of the status of these proceedings as set forth herein. Consequently, counsel for Defendant is directed to comply with all provisions of Rule 604 and certify that all requirements have been completed before further substantive hearing is to be held on the motion. The required consultation with the Defendant, the review of necessary transcripts, and the filing of any amended motion shall be completed within 28 days.”

¶ 13 Following the trial court’s “clarification,” defendant ultimately filed a third amended motion to reconsider his sentence in February 2020. His claims of error included allegations that his sentence for aggravated battery with a firearm was “illegal” and “void,” the court improperly ordered his sentences to run consecutively, the court erroneously imposed the same sentences for him and his codefendant, his sentences were excessive and disregarded his potential for rehabilitation, and the court failed to give adequate weight to mitigating factors. The record reflects Costello filed Rule 604(d) certificates of compliance on July 30, 2019, October 23, 2019, October 25, 2019, and March 4, 2020. Also on March 4, 2020, the court conducted a hearing on defendant’s third amended motion to reconsider and denied the motion.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant raises several challenges to his sentence of three consecutive 15-year prison terms. In particular, he contends his sentences were excessive, a violation of the proportionate penalties clause, improperly ordered to run consecutively, and impermissibly disparate to his codefendant’s sentences. However, given the procedural history of this case, we find we are precluded from considering the merits of a direct appeal from the underlying guilty plea proceedings. For the reasons that follow, we hold the trial court erred in determining otherwise during the collateral proceedings initiated by defendant, striking those collateral proceedings, and directing additional postplea proceedings pursuant to Rule 604(d).

¶ 17 Initially, the time within which defendant could file a direct appeal from his convictions and sentences expired 30 days after the trial court’s October 2005 denial of defendant’s September 2005 motion to reconsider his sentences. We note our subject-matter jurisdiction over a direct appeal by defendant “depends on the filing of a notice of appeal within the time prescribed

by” the supreme court rules. *People v. Coleman*, 2017 IL App (4th) 160770, ¶ 15, 90 N.E.3d 1043. Under Illinois Supreme Court Rule 606(b) (eff. Dec. 1, 1999), a defendant’s “notice of appeal must be filed *** 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 a criminal case, the entry of a sentence constitutes the final judgment in the case.” *People v. Salem*, 2016 IL 118693, ¶ 12, 47 N.E.3d 997.

¶ 18 Further, Rule 604(d) “governs postjudgment motions *** where the defendant has pleaded guilty.” *People v. Flowers*, 208 Ill. 2d 291, 303, 802 N.E.2d 1174, 1181 (2003). “With Rule 604(d) [citation], the defendant must file a postjudgment motion and the correct type of motion within 30 days of sentencing to preserve appellate review.” *People v. Haldorson*, 395 Ill. App. 3d 980, 984, 918 N.E.2d 1280, 1283 (2009). Relevant to defendant’s case, Rule 604(d) provides as follows:

“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 motion shall be heard promptly ***. 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.”

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Ill. S. Ct. R. 604(d) (eff. Feb. 1, 2005).

¶ 19 Here, the trial court sentenced defendant on August 31, 2005. On September 30, 2005, defendant filed a timely postjudgment motion—a motion to reconsider his sentence—under Rule 604(d). On October 14, 2005, the court denied defendant’s motion. According to Rule 606(b), defendant then had 30 days within which he could file a notice of appeal. Defendant did not file a notice of appeal within 30 days and, therefore, this court lacks subject matter jurisdiction over any direct appeal from the underlying plea proceedings.

¶ 20 Further, contrary to the trial court’s finding below, postplea counsel’s noncompliance with Rule 604(d) did not cause the proceedings on defendant’s motion to reconsider to remain “pending and unresolved.” One of Rule 604(d)’s requirements is the filing of a certificate by the defendant’s attorney, which confirms that the attorney has consulted with the defendant, reviewed the underlying proceedings, and made necessary amendments to the defendant’s postjudgment motion. Ill. S. Ct. R. 604(d) (eff. Feb. 1, 2005). However, the requirements set forth in Rule 604(d) are not jurisdictional. *Flowers*, 208 Ill. 2d at 301 (stating that noncompliance with Rule 604(d)’s requirements will preclude consideration of the merits of an appeal but “does not deprive the appellate court of jurisdiction over a subsequent appeal”).

¶ 21 Thus, although it is true that a trial court “proceeds in error” by proceeding with a hearing on a postplea motion without confirming that counsel filed a Rule 604(d) certificate, the lack of a certificate does not render the court’s ruling on the postplea motion void. *People v. Petty*, 366 Ill. App. 3d 1170, 1177, 853 N.E.2d 429, 435 (2006); see also *People v. Carroll*, 375 Ill. App. 3d 162, 166, 872 N.E.2d 1088, 1092 (2007) (“[T]he failure of counsel to file a Rule 604(d) certificate does not deprive the trial court of the authority to proceed on a motion to withdraw a guilty plea.”). Also, “[a] timely filed notice of appeal is the only jurisdictional step required to

confer jurisdiction upon the appellate court.” *People v. Abdullah*, 2019 IL 123492, ¶ 21, 160 N.E.3d 833.

¶ 22 In this case, the trial court proceeded in error by ruling on defendant’s motion to reconsider in the absence of a Rule 604(d) certificate. However, the lack of a certificate did not render the court’s ruling void or mean that the postplea proceedings were still pending. Additionally, the lack of a certificate would also not have deprived this court of jurisdiction had defendant filed a timely notice of appeal. We note that if an appeal had been taken, the appropriate remedy would have been to remand for the filing of a Rule 604(d) certificate, the opportunity to file a new postplea motion, and a new motion hearing. *People v. Lindsay*, 239 Ill. 2d 522, 531, 942 N.E.2d 1268, 1274 (2011).

¶ 23 Additionally, although not specifically referenced by the trial court, we find defendant’s November 2005 motion for rehearing of his motion to reconsider is also not a basis for finding the postplea proceedings remained pending. “When a court denies a postjudgment motion, the final judgment remains intact.” *People v. Johnson*, 2017 IL App (4th) 160853, ¶ 33, 87 N.E.3d 1062. “In such a case, further motions for reconsideration may be filed within 30 days of the denial, but they will not stay the time for filing a notice of appeal.” (Internal quotation marks omitted.) *Id.*; see also *People v. Miraglia*, 323 Ill. App. 3d 199, 205, 753 N.E.2d 398, 403 (2001) (“[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.”).

¶ 24 Here, as stated, on October 14, 2005, the trial court denied defendant’s timely filed motion to reconsider his sentence. On November 14, 2005, defendant filed a motion for rehearing of his motion to reconsider. Although the November 2005 motion was filed while the trial court

still had jurisdiction over defendant's case, that second postjudgment motion did not, itself, toll the 30-day period within which defendant was permitted to appeal.

¶ 25 Moreover, "[a] party filing a motion has the responsibility to bring it to the trial court's attention." *People v. Kelley*, 237 Ill. App. 3d 829, 831, 604 N.E.2d 1051, 1053 (1992). "[W]hen no ruling has been made on a motion, the motion is presumed to have been abandoned absent circumstances indicating otherwise." *People v. Van Hee*, 305 Ill. App. 3d 333, 335, 712 N.E.2d 363, 365 (1999).

¶ 26 In *Van Hee*, the defendant pleaded guilty to aggravated criminal sexual assault and was sentenced to 20 years' imprisonment. *Id.* at 334. He filed a timely motion to reconsider his sentence, but no evidence in the record indicated it was addressed or ruled upon by the trial court. *Id.* Over three years later, the defendant filed a motion for an extension of time to file a postconviction petition, which the trial court denied. *Id.* The defendant appealed, arguing that he was "not 'time-barred' from pursuing a petition for postconviction relief because there was no final judgment in [his] case" and his sentence was not final until the trial court ruled on his motion to reconsider. *Id.* The Second District disagreed, stating, in part, as follows:

"There is no evidence in the record establishing that the trial court ruled on the motion to reconsider. Absent evidence to the contrary, we may presume that [the] defendant abandoned his motion. The failure to obtain a ruling on a motion does not transform a final order into a nonfinal order. Because the motion was not adjudicated, the *** order entering [the] defendant's guilty plea and sentencing him was a final judgment and marked the beginning of the limitations period for filing a postconviction petition." *Id.* at 335.

¶ 27 In this case, the record similarly contains nothing showing the court ruled upon

¶ 28 Given the procedural history of this case, a direct appeal from defendant's guilty pleas and sentence is untimely. The trial court erred in finding the lack of compliance with Rule 604(d) rendered the proceedings on defendant's motion to reconsider nonfinal and pending over 14 years later. It further lacked authority to direct additional proceedings under Rule 604(d). We vacate the court's order striking the collateral proceedings and remand for further proceedings on those collateral issues. In doing so, we note the collateral proceedings below were inexcusably protracted and marked by lengthy periods of inaction. The same should not occur on remand.

¶ 29 Finally, we note that on appeal the State has filed a motion to strike portions of defendant's brief, which we ordered taken with the case. However, because we do not reach the merits of defendant's appeal, we also find it unnecessary to reach the merits of the State's motion.

30 III. CONCLUSION

¶ 31 For the reasons stated, we vacate the trial court’s judgment and remand for further proceedings.

¶ 32 Judgment vacated and cause remanded.

No. 127965

IN THE

SUPREME COURT OF ILLINOIS

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

NOTICE AND PROOF OF SERVICE

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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 April 11, 2022, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the in an envelope deposited in a U.S. mail box in Springfield, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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