

NOTICE
Decision filed 09/21/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250835-U
NO. 5-25-0835
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Clinton County.
	)	
v.	)	No. 95-CF-29
	)	
STEVEN D. RUSSELL,	)	Honorable
	)	Douglas C. Gruenke,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court.
Justices Boie and Clarke concurred in the judgment.

ORDER

¶ 1 *Held:* Because the trial court lacked jurisdiction to consider the defendant’s untimely motion to withdraw guilty plea, this court vacates the trial court’s order that “denied” the motion and dismisses that motion.

¶ 2 Pursuant to a negotiated plea of guilty, the defendant, Steven D. Russell, pleaded guilty to aggravated battery and obstructing justice, and he was sentenced to probation for a period of two years. After the two-year period ended, he was successfully discharged from probation. More than 28 years after his successful discharge, and more than 30 years after his plea and sentencing, the defendant filed a *pro se* “motion to withdraw plea” on the grounds that the trial court, at the time of the plea and sentencing, had failed to comply with the requirements of Illinois Supreme Court Rules 402 and 605. The trial court ruled that, due to the defendant’s failure to file his motion within 30 days after the plea and sentencing, the motion to withdraw guilty plea was “denied.” Now, the

defendant appeals from the denial order. The defendant's appointed attorney in this appeal, the Office of the State Appellate Defender (OSAD), has concluded that this appeal lacks merit. On that basis, OSAD has filed with this court a motion to withdraw as counsel, along with a supporting brief, in accordance with *Anders v. California*, 386 U.S. 738 (1967). OSAD has properly served the defendant with notice of its withdrawal motion, and this court has granted him ample opportunity to respond in writing to the *Anders* motion. The defendant has not responded. This court agrees with OSAD's assessment of this appeal. This court grants OSAD leave to withdraw as counsel, vacates the order that "denied" the defendant's motion to withdraw plea, and dismisses that motion.

¶ 3

I. BACKGROUND

¶ 4

A. Charges, Guilty Pleas, and Sentencing

¶ 5 In an information filed in February 1995, the defendant was charged with two felony counts. In count 1, he was charged with aggravated battery, a Class 3 felony. See 720 ILCS 5/12-4(b)(6), (e) (West 1992). In count 2, he was charged with obstructing justice, a Class 4 felony. See *id.* § 31-4(a), (d).

¶ 6 On May 10, 1995, the defendant, his appointed defense counsel, and the State appeared before the trial court. Counsel stated the terms of a negotiated plea, as follows: the defendant would plead guilty to both aggravated battery and obstructing justice, and he would be sentenced to probation for a period of two years, with various financial and other conditions. In answer to the trial court's queries, the defendant indicated that he understood the plea agreement and wanted to accept it.

¶ 7 The trial court admonished the defendant under Illinois Supreme Court Rule 402(a) (eff. Feb. 1, 1981) ("Admonitions to Defendant"). The court informed the defendant of the nature of

the charges and of the minimum and maximum sentences prescribed by law, and the defendant indicated his understanding. The court further informed him of the presumption of innocence; the right to plead guilty or to persist in pleading not guilty; the right to a trial, whether by jury or a judge, at which the State would have the opportunity to prove guilt beyond a reasonable doubt; the right at trial to confront and cross-examine the witnesses against him; the right to subpoena witnesses to testify on his own behalf at trial; and the right to choose whether to testify at trial, without having the choice not to testify being used against him in any way. The defendant indicated that he understood all those admonishments.

¶ 8 Turning to the voluntariness of the plea under Illinois Supreme Court Rule 402(b) (eff. Feb. 1, 1981) (“Determining Whether the Plea is Voluntary”), the court asked the defendant whether anybody had promised him anything, aside from the plea agreement, in order to persuade him to plead guilty, and the defendant answered in the negative. The court asked the defendant whether anyone had forced or threatened him to plead guilty, and the defendant again answered in the negative. To the charges of aggravated battery and obstructing justice, the defendant pleaded guilty.

¶ 9 The State offered a short factual basis for the pleas, which described how the defendant, an inmate at the Centralia Correctional Center, had attempted to dispose of suspected cannabis in a toilet and had subsequently pushed a correctional officer. The court determined that a factual basis existed, in accordance with Illinois Supreme Court Rule 402(c) (eff. Feb. 1, 1981) (“Determining Factual Basis for Plea”).

¶ 10 In court, the defendant signed a written “plea of guilty and waiver of jury,” as he acknowledged. Finding that the pleas of guilty were knowing and voluntary, the court accepted the pleas and entered judgment on them. In accord with the plea agreement, the court sentenced

the defendant to two years of probation, on each of the two counts, with certain financial and other conditions.

¶ 11 Finally, the court admonished the defendant pursuant to Illinois Supreme Court Rule 605(b) (eff. Aug. 1, 1992). The court advised the defendant that he had a right to an appeal, and that prior to taking an appeal, he would need to file with the court, within 30 days of that date, a written motion asking the court for leave to withdraw his guilty plea. The court further advised that the defendant would need to present in that written motion all the reasons that he felt he should be allowed to withdraw his plea, and that any reason not included in the motion would not be considered by the appellate court. Continuing, the court stated that if the defendant filed such a motion, the motion would be set for hearing. If the motion were granted, the court stated, the guilty plea would be withdrawn and the charges would be set for trial, but if the motion were denied, the defendant would have 30 days to file a notice of appeal. The court added that if the defendant wanted to file a motion to withdraw guilty plea, he would have counsel available to him for the next 30 days. The court then asked the defendant whether he understood that he “[did] have appeal rights,” the defendant answered, “Yes, sir.” On the same day as the plea and sentencing, the trial court entered a written probation order, covering both offenses, that conformed with the oral pronouncement of sentence.

¶ 12 B. Allegations of Probation Violation, and Successful Discharge from Probation

¶ 13 Beginning in late November 1995, the State made allegations that the defendant had violated conditions of his probation, and it sought to terminate probation. Ultimately, though, in early May 1997, the State moved to dismiss its petition to revoke probation, and the trial court granted the motion to dismiss.

¶ 14 On May 20, 1997, the defendant’s probation officer reported that the defendant’s probation period had expired on May 9, 1997, and he recommended that the defendant be discharged from probation. On May 28, 1997, the court ordered the defendant successfully discharged from probation.

¶ 15 C. Motion to Withdraw Guilty Pleas: Subject of the Instant Appeal

¶ 16 After the defendant’s successful discharge from probation, nothing more happened in this case for more than 28 years. Then, on September 26, 2025, the defendant filed a one-page *pro se* “motion to withdraw plea.” The defendant asserted that “at the time of his plea the trial court failed to comply with the requirements set forth under Supreme Court Rules 402 and 605.” He did not offer any specifics.

¶ 17 On September 29, 2025, the trial court entered a docket-entry dispositional order. It read as follows: “Motion to withdraw guilty plea is denied as same was not filed within 30 days of plea; clerk to send notice.”

¶ 18 The defendant filed a timely *pro se* notice of appeal. At the defendant’s request, the court appointed OSAD to represent the defendant on appeal.

¶ 19 II. ANALYSIS

¶ 20 This appeal is from the trial court’s order that “denied” the defendant’s motion to withdraw his guilty plea. OSAD, the defendant’s appointed attorney on appeal, has filed an *Anders* motion to withdraw as counsel, along with a supporting brief. In the brief, OSAD discusses one potential issue for review, namely, whether this court may consider this appeal on the merits where the defendant failed to file a timely motion to withdraw his guilty plea. This court agrees with OSAD’s ultimate conclusion that it cannot consider this appeal on the merits.

¶ 21 Under Illinois Supreme Court Rule 604(d), there could be “[n]o appeal” from a judgment entered upon a plea of guilty unless the defendant, within 30 days after sentencing, filed with the trial court a motion to withdraw the plea and vacate the judgment. Ill. S. Ct. R. 604(d) (eff. Aug. 1, 1992). Where more than 30 days elapsed since sentencing after a plea of guilty, and the trial court had not extended the limitation period for good cause shown, the trial court was “divested of jurisdiction to entertain” a Rule 604(d) motion to withdraw plea. *People v. Flowers*, 208 Ill. 2d 291, 303 (2003). A trial court’s lack of jurisdiction is not a complete bar to a reviewing court’s exercise of jurisdiction. *People v. Bailey*, 2014 IL 115459, ¶ 29. However, a reviewing court is limited to considering the issue of jurisdiction below. *Id.*; see *Flowers*, 208 Ill. 2d at 307.

¶ 22 In the instant case, the defendant, on May 10, 1995, pleaded guilty to aggravated battery and obstructing justice, and he was sentenced to probation for two years, all in accordance with the parties’ plea agreement. He then had 30 days—that is, until June 9, 1995—in which to file a motion to withdraw his plea under Rule 604(d). He did not file a motion to withdraw his plea (or any other document) within that 30-day window. By the time he filed his motion to withdraw his plea—on September 26, 2025—more than 30 years had passed since his plea and sentencing, and more than 30 years had passed since the trial court lost jurisdiction over the motion. At that point, the only action the trial court could properly take was to dismiss the motion.

¶ 23 In its order disposing of the defendant’s motion to withdraw plea, the trial court did not explicitly acknowledge that it had lost jurisdiction, but it seemed to recognize its loss of jurisdiction when it noted that the motion to withdraw plea “was not filed within 30 days of plea.” Despite this apparent recognition, the court nevertheless “denied” the motion, instead of dismissing it. Denial of a motion implies that the court considered the motion’s merits, while dismissal of an order implies, for example, that the court did not have jurisdiction to consider the merits. See *Bailey*,

2014 IL 115459, ¶¶ 3, 28. Because the court lacked jurisdiction, its ruling on the merits of the motion was void. See *People v. Davis*, 156 Ill. 2d 149, 155 (1993). The ruling cannot be left intact. Accordingly, the trial court’s judgment is vacated, and the defendant’s motion to withdraw guilty plea is dismissed. See *Bailey*, 2014 IL 115459, ¶ 29.

¶ 24

III. CONCLUSION

¶ 25 Because the defendant did not file a timely motion to withdraw his guilty plea, the trial court did not have jurisdiction to rule on the motion’s merits; the court therefore should have dismissed the motion. Accordingly, OSAD’s *Anders* motion is granted, the order that “denied” the defendant’s motion must be vacated, and the motion to withdraw guilty plea must be dismissed.

¶ 26 OSAD’s motion granted; judgment vacated; defendant’s *pro se* motion dismissed.