

September 25, 2026

No. 1-24-2031

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	No. 93CR21320
SAUL AGUADO,	)	
	)	Honorable
Defendant-Appellant.	)	Diana L. Kenworthy,
	)	Judge, presiding.

JUSTICE C.A. WALKER delivered the judgment of the court.
Presiding Justice Oden Johnson and Justice Wilson concurred in the judgment.

ORDER

¶ 1 **Held:** The notice of appeal conferred jurisdiction to review the September 12, 2024, order denying defendant's motion to correct presentence custody credit, but not the separate 2022 rulings on which defendant's ineffective assistance claim rests. Because defendant identifies no reversible error in the September 2024 proceeding, the circuit court's judgment is affirmed.

¶ 2 Defendant Saul Aguado appeals from the circuit court's denial of his *pro se* motion seeking additional presentence custody credit for the time he spent detained in Mexico awaiting extradition. Aguado contends that counsel who represented him during the 2022 proceedings rendered ineffective assistance by failing to investigate and advocate for that credit. The State responds that this court lacks jurisdiction because Aguado's notice of appeal identified only the September 12, 2024, order and not the separate rulings entered in 2022. We find that the notice conferred jurisdiction to review the September 2024 order but did not permit review of the 2022 rulings, and because Aguado's ineffective assistance claim identifies no error in the proceeding that produced the order before us, we affirm.

¶ 3 BACKGROUND

¶ 4 On December 21, 1994, defendant Saul Aguado pleaded guilty to first degree murder. The circuit court accepted the plea, found him guilty, and continued the matter to January 27, 1995, for sentencing. The court informed Aguado that he was required to appear at sentencing to receive the benefit of the plea conference and that, if he failed to appear, he could receive a sentence of up to 100 years' imprisonment. Aguado stated that he understood.

¶ 5 Aguado failed to appear on January 27, 1995. Defense counsel informed the court that he did not know Aguado's whereabouts and Aguado had not reported to work since January 13, 1995. The court issued a warrant for Aguado's arrest and continued the matter to March 10, 1995. Aguado failed to appear on March 10, 1995, and the court sentenced him in absentia to 60 years' imprisonment. *People v. Aguado*, 2024 IL App (1st) 220615-U, ¶¶ 9-11.

¶ 6 Aguado subsequently left the United States and remained in Mexico. At a later evidentiary hearing, Aguado testified that Mexican or federal agents arrested him in Mexico on August 28, 2005. He was extradited to Illinois in August 2006 after spending approximately one year in

custody in Mexico. Correspondence from the United States Department of Justice, however, states that authorities were unofficially informed that Aguado was arrested in Mexico on August 29, 2005. An Illinois Department of Corrections document lists August 8, 2006, as Aguado's admission date.

¶ 7 In July 2017, Aguado filed a motion for a new trial and sentencing hearing pursuant to section 115-4.1(e) of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-4.1(e) (West 2016)). Aguado alleged that his failure to appear for sentencing was without his fault and resulted from circumstances beyond his control. The circuit court initially denied the motion without an evidentiary hearing, but this court remanded for the circuit court to conduct one. *Aguado*, 2024 IL App (1st) 220615-U, ¶¶ 14-15.

¶ 8 On April 21, 2022, the circuit court conducted the evidentiary hearing. Aguado testified that he traveled to Mexico in January 1995 because his father was ill and while there, underwent surgery for a thyroid condition. Aguado stated he attempted to return to the United States in September 1996, but immigration authorities destroyed his documents and returned him to Mexico. He further testified that he was arrested on August 28, 2005, and was extradited to Illinois in August 2006. During his testimony, Aguado stated, "I would like to ask for the credit for the time that I did in Mexico."

¶ 9 Following Aguado's testimony, counsel requested a new sentencing hearing. Alternatively, counsel asked that Aguado receive credit for the time he spent in custody before posting bond in the original proceedings. The circuit court denied Aguado's motion, finding that he "willfully left the jurisdiction" and "chose to leave Illinois to go to Mexico and not return." The court clarified that it was considering "the credit that [Aguado] spent in custody on this case before posting bond"

and was “not talking about the time for extradition.” The court continued the matter to determine the amount of pre-bond custody credit due.

¶ 10 After Aguado’s return to Illinois, a November 21, 2006, mittimus reflected 59 days of presentence custody credit. A June 22, 2007, corrected mittimus reflected 107 days of credit. Following the April 21, 2022, hearing, the circuit court issued a corrected mittimus on May 17, 2022, reflecting a total of 342 days of presentence custody credit. In its subsequent written orders, the court stated that the total consisted of an additional 283 days added to the 59 days previously awarded. Aguado filed a notice of appeal from the April 21, 2022, order. His amended notice of appeal identified both the April 21, 2022, order and the March 10, 1995, judgment.

¶ 11 On October 7, 2022, while the appeal from the April 21, 2022, order was pending, Aguado filed a *pro se* “Motion to Amend Judgment/Mittimus”. He requested a total of 940 days of custody credit, including credit for the period he spent in custody following his arrest in Mexico. On November 18, 2022, the circuit court denied the motion. The court stated the custody-credit issue had already been addressed during the April 21, 2022, hearing and through the corrected mittimus entered on May 17, 2022.

¶ 12 Meanwhile, in the pending appeal from the April 21, 2022, order, Aguado challenged only his 60-year sentence as excessive. He did not challenge the denial of his section 115-4.1(e) motion or counsel’s handling of his custody-credit request. On March 11, 2024, this court affirmed Aguado’s sentence. *Aguado*, 2024 IL App (1st) 220615-U, ¶¶ 19, 21, 34.

¶ 13 Aguado filed the *pro se* pleading at issue here on September 3, 2024. The motion, entitled “Petition of Amend Judgment/Mittimus Motion for Order Nunc Pro Tunc,” asserted that the 107 days of credit reflected in the June 22, 2007, mittimus had been calculated incorrectly. He alleged he was arrested and detained in Mexico on August 28, 2005, and admitted to the Illinois

Department of Corrections on August 8, 2006. Aguado therefore asserted he was entitled to 346 days of additional custody credit for that period.

¶ 14 In support of his request, Aguado attached, among other exhibits, an August 31, 2005, letter from the United States Department of Justice. The letter stated that the Cook County State's Attorney's Office had requested a provisional-arrest warrant for Aguado in 1998 and that the Department of Justice had been unofficially informed that Aguado was arrested in Mexico on August 29, 2005. Aguado also attached a September 14, 2005, letter from the State's Attorney's Office concerning the costs associated with his extradition in this case, and an Illinois Department of Corrections document listing August 8, 2006, as his admission date.

¶ 15 On September 12, 2024, the circuit court denied Aguado's motion. In its written order, the court found Aguado's motion raised the same issues presented during the April 2022 evidentiary hearing and in his previous motion to correct the mittimus. The court recounted that it had granted Aguado an additional 283 days of pre-bond custody credit in May 2022 and stated that "no additional corrections to the mittimus will be made."

¶ 16 Aguado filed a notice of appeal on September 30, 2024, identifying the September 12, 2024, order denying his petition to amend the judgment and mittimus and motion for an order nunc pro tunc. On appeal, he contends that counsel who represented him during the 2022 proceedings rendered ineffective assistance by failing to investigate and advocate for custody credit for the period he spent detained in Mexico awaiting extradition. Relying on August 29, 2005, arrest date contained in the DOJ's correspondence, Aguado now requests 344 additional days of credit and asks this court to remand the cause for further evidentiary proceedings.

¶ 17

JURISDICTION

¶ 18 On September 12, 2024, the circuit court denied Aguado's motion to amend the judgment and mittimus and for an order nunc pro tunc. Aguado filed his timely notice of appeal on September 30, 2024. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 472(d), 603, and 606(b). Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. Rs. 472(d) (eff. Feb. 1, 2024), 603 (eff. Feb. 6, 2013), 606(b) (eff. July 1, 2017).

¶ 19

ANALYSIS

¶ 20 As an initial matter, the State contends that this appeal must be dismissed for lack of jurisdiction. Specifically, the State contends that Aguado's notice of appeal identifies only the circuit court's September 12, 2024, order denying his motion to amend the judgment and mittimus, while his ineffective assistance claim concerns counsel's performance during the April and May 2022 proceedings. Aguado responds that the 2022 proceedings were a step in the procedural progression leading to the September 2024 order because both proceedings involved his request for custody credit for time he spent detained in Mexico, and the September 2024 order expressly relied on the earlier proceedings. Whether this court has jurisdiction presents a question of law that we review *de novo*. *People v. Shinaul*, 2017 IL 120162, ¶ 8.

¶ 21 The filing of a notice of appeal is the jurisdictional step that initiates appellate review. *People v. Smith*, 228 Ill. 2d 95, 104 (2008). A notice of appeal confers jurisdiction on the reviewing court to consider the judgments or portions of the judgments identified in the notice. *People v. Ratliff*, 2024 IL 129356, ¶ 17. However, a notice of appeal must be construed liberally and considered as a whole. *Smith*, 228 Ill. 2d at 104-05. A notice is sufficient when it fairly and adequately identifies the judgment challenged and the relief sought, advising the prevailing party of the nature of the appeal. *Id.* at 105. The notice need not identify each issue the appellant intends

to raise because “the briefs, and not the notice of appeal, specify the precise points relied upon for reversal.” *People v. Patrick*, 2011 IL 111666, ¶ 26.

¶ 22 Here, Aguado’s September 30, 2024, notice of appeal expressly states that he is appealing from the September 12, 2024, order denying his “Petition to Amend Judgment/Mittimus and Motion for Order Nunc Pro Tunc.” Aguado timely filed the notice within 30 days after the circuit court entered that order. Accordingly, the notice fairly and adequately identifies the September 12, 2024, order and confers jurisdiction on this court to review it.

¶ 23 *Smith* does not compel a different result. In *Smith*, the defendant sought review of a February 2006 order denying his motion to correct his sentence, but his notice of appeal identified only the original judgment entered in November 2004. *Smith*, 228 Ill. 2d at 98-101. Our supreme court held that the notice did not confer jurisdiction because it identified the 2004 judgment “and only that judgment,” rather than the 2006 order the defendant sought to challenge. *Id.* at 105. Here, by contrast, Aguado’s notice identifies the precise post judgment order from which he presently appeals. We therefore reject the State’s contention that we lack jurisdiction over the appeal in its entirety.

¶ 24 Our jurisdiction over the September 2024 order, however, does not necessarily extend to the separate judgments entered in 2022. An appeal from a final judgment permits review of an earlier ruling not identified in the notice of appeal when the earlier ruling was a step in the procedural progression leading to the identified judgment. *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 434-36 (1979). The fact that the unspecified ruling preceded the identified judgment is insufficient. Rather, the rulings must be sufficiently intertwined such that the earlier ruling was a procedural step leading to the later judgment. *McGath v. Price*, 342 Ill. App. 3d 19, 34 (2003).

¶ 25 The rulings entered in 2022 were not part of the same procedural progression as the September 2024 order. The April 21, 2022, evidentiary hearing arose from Aguado's motion for a new trial and sentencing hearing under section 115-4.1(e). That proceeding required the circuit court to determine whether Aguado's failure to appear for sentencing was without his fault and resulted from circumstances beyond his control. See 725 ILCS 5/115-4.1(e) (West 2016). After denying that motion, the court separately considered Aguado's request for pre-bond custody credit and, on May 17, 2022, entered a corrected mittimus awarding him an additional 283 days of credit. Aguado filed a notice of appeal identifying the April 21, 2022, order and the March 10, 1995, judgment. In that appeal, Aguado challenged only his 60-year sentence, which this court affirmed. *Aguado*, 2024 IL App (1st) 220615-U, ¶¶ 19, 21, 34. Later, while that appeal was pending, Aguado initiated a separate proceeding by filing his October 7, 2022, *pro se* motion seeking additional custody credit, including credit for his detention following his arrest in Mexico. The court denied that motion on November 18, 2022.

¶ 26 The September 2024 order, in contrast, resulted from a new motion seeking correction of an alleged error in the calculation of presentence custody credit. Although Aguado captioned the pleading as a motion for an order nunc pro tunc, its substance was consistent with the remedy provided by Rule 472(a)(3). See *People v. Wells*, 2024 IL 129402, ¶ 16; Ill. S. Ct. R. 472(a)(3) (eff. Feb. 1, 2024). Rule 472 authorized Aguado to seek correction of the alleged sentencing error at any time following judgment. Ill. S. Ct. R. 472(a) (eff. Feb. 1, 2024). Thus, Aguado's ability to file the 2024 motion did not depend on the April or May 2022 proceedings, and the earlier rulings were not procedural prerequisites to the September 2024 order.

¶ 27 We acknowledge that Aguado raised the issue of credit for his detention in Mexico during the April 2022 hearing and sought such credit in his October 2022 and September 2024 motions.

We also acknowledge that the circuit court discussed the 2022 proceedings in its September 2024 order. Those substantive connections, however, did not transform the independently appealable 2022 rulings into preliminary rulings that produced the 2024 order. The April and May 2022 proceedings had concluded and generated a prior appeal, while the November 2022 order separately disposed of Aguado's October 2022 motion. None of those rulings were necessary to Aguado's later invocation of Rule 472. Accordingly, they were not steps in the procedural progression leading to the September 2024 order. Thus, we find Aguado's notice of appeal confers jurisdiction to review the September 12, 2024, order but does not permit us to review the separate judgments entered in 2022.

¶ 28 Next, Aguado contends that counsel who represented him during the 2022 proceedings rendered ineffective assistance by failing to investigate and advocate for custody credit for the time he spent detained in Mexico awaiting extradition. He contends that counsel should have obtained the relevant extradition documents, presented those documents to the circuit court, and requested approximately 344 additional days of custody credit. Aguado asks this court to remand the matter for further evidentiary proceedings with new counsel.

¶ 29 Aguado's claim, however, does not identify any error committed in the proceeding that produced the September 12, 2024, order. He was not represented by the challenged counsel when he filed his 2024 motion, and his claim does not concern counsel's performance in that proceeding. Instead, the alleged deficient performance occurred during the April and May 2022 proceedings, which are not before us in this appeal. Although Aguado's notice of appeal was not required to list each legal theory he intended to raise, the notice cannot be used to obtain review of counsel's performance during separate proceedings that concluded more than two years before the order identified in the notice.

¶ 30 Aguado contends that the circuit court's reference to the 2022 proceedings connects counsel's alleged ineffectiveness to the September 2024 order. The court's reliance on its understanding of the earlier proceedings, however, does not make counsel's conduct during those proceedings an error committed in 2024. Moreover, Aguado's opening brief does not develop an independent argument that the circuit court misapplied Rule 472 or otherwise erred when it denied the September 2024 motion. Instead, his request for reversal is premised on counsel's alleged failure to investigate and present the custody-credit claim in 2022. To the extent Aguado asserts more directly in his reply brief that the circuit court erroneously concluded in 2024 that the issue had previously been addressed, that contention was not developed in his opening brief and is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020).

¶ 31 Moreover, the record is inadequate to resolve Aguado's allegation that counsel failed to investigate his detention in Mexico. The record does not disclose whether counsel investigated the requested credit, what information was available to counsel at the time, or why counsel did not pursue the request. The record also does not conclusively establish the dates, basis, or circumstances of Aguado's detention in Mexico, including whether and for what entire period he was held as a result of this Illinois offense. Our supreme court has recognized that ineffective assistance claims may be better suited to collateral proceedings when the record is incomplete or inadequate to resolve the claim. *People v. Veach*, 2017 IL 120649, ¶ 46. A postconviction proceeding allows the parties to develop a factual record bearing specifically on counsel's alleged ineffectiveness. *People v. Bew*, 228 Ill. 2d 122, 135 (2008). Aguado's ineffective assistance claim may be more appropriately raised, if at all, in a proceeding under the Post-Conviction Hearing Act (725 ILCS 5/122-1 et seq. (West 2024)), and we express no opinion regarding the merits of such a claim or his ability to satisfy the Act's requirements.

¶ 32 Because Aguado's ineffective assistance claim concerns proceedings and judgments that are not before us, it supplies no basis for reversing the September 12, 2024, order. Accordingly, we affirm the judgment of the circuit court without reaching whether he would otherwise be entitled to custody credit for the period he spent detained in Mexico.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 35 Affirmed.