

NOTICE
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2024 IL App (5th) 230273-U

NO. 5-23-0273

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,)	Clark County.
)	
v.)	No. 21-CF-51
)	
JOHN D. PITTS,)	Honorable
)	Tracy W. Resch,
Defendant-Appellant.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Boie and McHaney concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the defendant perfected a proper notice of appeal on September 12, 2022, the circuit court lost subject matter jurisdiction to enter its *sua sponte* order on October 7, 2022, and additional rulings on April 19, 2023. Said order and rulings were void *ab initio*. Where circuit court entered void orders and rulings, the revestment doctrine does not apply. We hereby vacate any proceedings, orders, or rulings after September 12, 2022. Further, we reverse the circuit court’s order entered on August 12, 2022, and remand for additional proceedings in compliance with Rule 604(d).
- ¶ 2 The defendant, John D. Pitts, appeals the denial of his motion to withdraw guilty plea based entirely on allegations of ineffective assistance of counsel. For the reasons that follow, we find that the circuit court’s order entered on October 7, 2022, is void *ab initio* and any further proceedings or findings that occurred after the defendant filed a notice of appeal on September 12, 2022, are vacated. Based on this finding, we do not reach the issues raised by the defendant, which occurred after September 12, 2022. Further, we reverse the circuit court’s August 12, 2022, order

and remand for additional proceedings in compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2017).

¶ 3

I. BACKGROUND

¶ 4 We recite only those facts necessary for an understanding of our disposition of this appeal. On September 13, 2021, the defendant was charged by information with 9 counts of predatory criminal sexual assault of a child and 13 counts of child pornography, all of which were Class X felonies.

¶ 5 On April 28, 2022, the defendant entered into a negotiated plea agreement wherein he pled guilty to one count of predatory criminal sexual assault of a child. As part of the agreement, the remaining counts and additional cases were dismissed, and he was sentenced to 36 years in the Illinois Department of Corrections, served at 85%, with a 3 year to natural life mandatory supervised release period. The circuit court found that the defendant's guilty plea and waiver of right to trial were made knowingly and voluntarily and imposed the sentence. After the circuit court admonished the defendant on his appeal rights, the circuit court informed the defendant that his defense counsel, William McGrath, would remain his attorney for the next 30 days should he wish to file a motion to withdraw his guilty plea.

¶ 6 On May 31, 2022, the defendant filed a timely *pro se* motion to withdraw guilty plea and vacate sentence alleging various claims of ineffective assistance of counsel. On August 10, 2022, the circuit court held a hearing on the defendant's *pro se* motion. At the outset, the circuit court instructed the defendant that it had a duty to inquire into the factual basis of his ineffective claim to assess whether further action, if any, was warranted. The hearing consisted of the circuit court asking the defendant questions concerning the allegations he raised in his motion regarding ineffective assistance of counsel. The State and the defendant's counsel were present at the hearing, but neither participated or made any statements or argument to the circuit court regarding the

defendant's *pro se* motion. After taking it under advisement, on August 12, 2022, the circuit court issued an order finding that:

“On August 10, 2022, the court conducted an inquiry into the factual basis of defendant's *pro se* allegations of ineffective assistance of trial counsel. Having considered the factual basis, the court finds that the *pro se* posttrial motion is meritless. The motion is denied.

If defendant wants to appeal the decision of the court, he must within 30 days file a written notice of appeal with the clerk of the Circuit Court of Clark County or ask this court to direct the clerk to file a written notice of appeal on his behalf.”

¶ 7 On September 12, 2022, the defendant filed a timely *pro se* motion entitled “Motion to Appeal Denial of Motion to Withdraw Guilty Plea on Grounds of Ineffective Counsel.” Therein, the defendant noted that he was “filing this appeal” regarding the circuit court's consideration of his motion to withdraw guilty plea based on ineffective assistance of trial counsel as meritless and believed he was not given proper counsel.

¶ 8 Thereafter, on October 7, 2022, the circuit court *sua sponte* entered an additional order, which found the following:

“Defendant's *pro se* Motion to Withdraw Guilty Pleas [*sic*] and Vacate Sentence filed May 31, 2022, alleged ineffective assistance of trial counsel as grounds to withdraw defendant's guilty plea. The court conducted a hearing on August 10, 2022, to determine whether to appoint new counsel for the defendant. When defendant was given his appeal rights following his guilty plea, he was informed that trial counsel would continue to act as his attorney for purposes of filing post-trial motions. The court considered both the factual and legal merits of defendant's claim. *People v. Roddis*, 2020 IL 124352. The court

ruled that defendant's claim was meritless and the appointment of new counsel other than defendants' [sic] trial counsel is not required. The motion was denied.

Although the appointment of new counsel is not required on the allegations of the defendants' [sic] *pro se* motion, the defendant has the right to aid of an attorney in the preparation and presentation of a post-plea motion. Pursuant to Supreme Court Rule 604(d) the court hereby appoints attorney William McGrath as counsel for defendant.

A transcript of the plea proceedings and of the hearing conducted August 10, 2022, shall be prepared and furnished to the defendant without cost as provided in Supreme Court Rule 604(d). Defendant's attorney shall file with the trial court a certificate stating that he 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 the report of the plea of guilty plea [sic] and sentence and has made any amendments to the motion necessary for adequate presentation of any defects in those proceedings.

Defendant's pending motion to appeal shall be stayed until proceedings on defendants' [sic] motion to withdraw guilty plea are final."

¶ 9 On February 1, 2023, the defendant filed a *pro se* letter to the circuit court and a motion to proceed *pro se*. In his *pro se* letter, the defendant stated, "I am further OBJECTING to the courts attempt to 'stay' my appeal ***." (Emphasis in original.) In addition, the defendant stated in his motion to proceed *pro se* that the circuit court's decision to "stay" his appeal conflicts with his interests in the case.

¶ 10 Thereafter, additional motions were filed by the parties but are not relevant to the disposition of this appeal. On April 19, 2023, the circuit court held a hearing on the motions. At the hearing, the circuit court never addressed the defendant's motion to proceed *pro se*. Further,

the circuit court determined that the defendant is not asserting any other grounds for withdrawing his guilty plea other than his claim of ineffective assistance of counsel. There were no substantive arguments made by either the defendant or his defense counsel regarding his motion to withdraw guilty plea, instead the discussion between the circuit court and the parties centered around how to proceed procedurally and whether to “let [an appeal] go up.” The circuit court determined that the matter had already been ruled upon in its previous ruling, that it stands by that ruling, that no further proceedings were necessary, that the defendant’s motion is denied, and to have the clerk file a notice of appeal on the defendant’s behalf. The record on appeal does not contain a written order of the circuit court’s findings from the April 19, 2023, hearing. This appeal followed.

¶ 11

II. ANALYSIS

¶ 12 On appeal, the defendant argues that the circuit court’s denial of his postplea motions should be vacated and the cause remanded, because (1) the circuit court failed to address his request to represent himself and did not comply with Illinois Supreme Court Rule 401 (eff. July 1, 1984), and (2) in the alternative, the defendant’s counsel failed to comply with the certification requirement of Illinois Supreme Court Rule 604(d) (eff. July 1, 2017).

¶ 13 The State first asserts that the basis for the defendant’s arguments on appeal resulted from rulings when the trial court lacked jurisdiction and were thus void. The State argues that the circuit court lost jurisdiction after the defendant filed his notice of appeal on September 12, 2022, rendering all filings and orders thereafter void. Thus, the defendant’s arguments on appeal are moot. Further, the State claims that this court only has jurisdiction regarding the August 12, 2022, order denying the defendant’s *pro se* motion to withdraw his guilty plea. Therefore, the defendant has forfeited any issue related to the circuit court’s August order by failing to raise arguments challenging that order in his brief on appeal.

¶ 14 In response, the defendant argues that the circuit court regained jurisdiction pursuant to the revestment doctrine and his claims are not moot or forfeited. He asserts that the revestment doctrine applies to this case and that each of the three requirements of the doctrine are satisfied. He claims that (1) both parties actively participated in the post-September 12, 2022, proceedings, (2) neither party objected to the untimeliness of the subsequent filings by the parties, and (3) each party asserted positions that make the proceedings inconsistent with the merits of the prior judgment. In support, the defendant argues that he asserted a position inconsistent with the judgment, because he filed additional documents and arguments in favor of his motion to withdraw his guilty plea which demonstrates he did not regard the prior judgment as final. Additionally, he argues that the State asserted a position inconsistent with the judgment, because it (1) “approved” of the circuit court’s October 7, 2022, order appointing attorney McGrath to assist the defendant with any additional claims, (2) never took the position that the motion to withdraw guilty plea had already been decided, and (3) took the position that a 604(d) certificate should be filed. All indicating that the State did not view the August 12, 2022, order as final.

¶ 15 The State raises the argument that this court only has jurisdiction regarding the August 12, 2022, order. Thus, before we address the defendant’s arguments, we must first determine whether we have subject matter jurisdiction to do so. See, e.g., *Steel City Bank v. Village of Orland Hills*, 224 Ill. App. 3d 412, 416 (1991). We are obligated to examine both our own jurisdiction and the jurisdiction of the circuit court in the cause at issue. *Cohen v. Salata*, 303 Ill. App. 3d 1060, 1063 (1999). Illinois courts have an independent duty to consider subject matter jurisdiction, which cannot be waived, stipulated to, or consented to by the parties. *Bradley v. City of Marion*, 2015 IL App (5th) 140267, ¶ 13. The review of a circuit court’s subject matter jurisdiction is *de novo*. *In re Marriage of Adamson*, 308 Ill. App. 3d 759, 764 (1999). To determine whether the circuit court lost jurisdiction, we must first address whether the August 12, 2022, order was a final and

appealable order and whether the defendant's *pro se* filing on September 12, 2022, should be construed as a notice of appeal.

¶ 16 Article VI, section 6, of the Illinois Constitution confers on the appellate court jurisdiction to review final judgments entered by a circuit court. Ill. Const. 1970, art. VI, § 6; *People v. Shinaul*, 2017 IL 120162, ¶ 10. By virtue of the filing of a posttrial motion, a judgment is not final and appealable until the motion is ruled upon by the court. *People v. Alston*, 302 Ill. App. 3d 207, 210 (1999). “It is well settled that a ‘final judgment’ is a determination by the circuit court on the issues presented by the pleadings ‘which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit.’ ” *Shinaul*, 2017 IL 120162, ¶ 10 (quoting *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 47). “In other words, a judgment or order is considered final and appealable if it determines the litigation on the merits such that the only thing remaining is to proceed with execution of judgment.” *Id.* “Accordingly, only an order which leaves the cause still pending and undecided is not a final order for purposes of appeal.” *Id.*

¶ 17 Here, the defendant timely filed a motion to withdraw his guilty plea as required by Illinois Supreme Court Rule 604(d) in order to appeal the judgment entered upon his guilty plea. Because the only arguments raised in the defendant's motion were claims of ineffective assistance, the circuit court conducted a preliminary *Krankel* inquiry to determine whether new counsel should be appointed. Based upon the circuit court's August 12, 2022, order, it determined there was no factual basis for the defendant's claims and found that the defendant's “*pro se* posttrial motion is meritless.” The circuit court further found that the defendant's “motion is denied.” Immediately following the circuit court's denial of the defendant's motion, the order recites the defendant's appeal rights therefrom. In determining whether a judgment is final, one should look to its substance and effect rather than to form. *In re J.N.*, 91 Ill. 2d 122, 128 (1982). Upon our review, the substance and effect of the circuit court's August order and the clear language utilized within

can only be construed as a final and appealable order on the merits of the defendant's motion where it found the "motion is denied" and then proceeded to give the defendant his appeal rights.

¶ 18 We next analyze whether the defendant perfected a proper notice of appeal from the circuit court's August order. "[A]n appeal is perfected by the timely filing of a notice of appeal, and it is this step which vests the appellate court with jurisdiction." *In re J.T.*, 221 Ill. 2d 338, 346 (2006); Ill. S. Ct. R. 606(a) (eff. Mar. 12, 2021). Illinois Supreme Court Rule 604(d) further specifies that when a defendant enters a negotiated plea of guilty, the appellate court may only consider his appeal if defendant first files a motion to withdraw his plea.

¶ 19 A notice of appeal is generally construed liberally. *People v. Smith*, 228 Ill. 2d 95, 104 (2008). Illinois Supreme Court Rule 606(d) (eff. Mar. 12, 2021) sets forth the form requirements to be incorporated in a notice of appeal and states that the document should substantially be in that form. Where a deficiency is one of form rather than substance, an appellate court has jurisdiction if (1) the notice fairly and accurately advises the appellee of the nature of the appeal and (2) the appellee is not prejudiced by the deficiency in form. *People v. Clark*, 268 Ill. App. 3d 810, 813 (1995). " '[N]otice should be considered as a whole and will be deemed sufficient to confer jurisdiction on an appellate court when it fairly and adequately sets out the judgment complained of and the relief sought, thus advising the successful litigant of the nature of the appeal.' " *Smith*, 228 Ill. 2d at 105 (quoting *Lang v. Consumers Insurance Service, Inc.*, 222 Ill. App. 3d 226, 229 (1991)).

¶ 20 Here, on September 12, 2022, within the 30-day time period to file an appeal, the defendant filed a *pro se* document entitled "Motion to Appeal Denial of Motion to Withdraw Guilty Plea on Grounds of Ineffective Counsel." Although the defendant's *pro se* document was not entitled "notice of appeal" and did not strictly adhere to form, it substantially complied with the rule. The *pro se* filing fairly and accurately advised the State of the nature of the appeal and it was clear that

the defendant wished to appeal the circuit court's August 12, 2022, order denying his motion to withdraw guilty plea. Further, the defendant referred to his *pro se* filing as an "appeal" in more than one area of the hand-written document. Here, the deficiency is one of form, rather than substance, and no prejudice can be shown to the State; therefore, defendant's " 'failure to comply strictly with the form of the notice is not fatal.' " *Id.* (quoting *Lang*, 222 Ill. App. 3d at 230). Thus, we construe the defendant's September 12, 2022, filing as a proper notice of appeal.

¶ 21 Based on the above determinations, we find that the circuit court lost jurisdiction upon the defendant's filing of a notice of appeal on September 12, 2022. The only jurisdictional step in the perfection of a criminal appeal is the filing of the notice of appeal. Ill. S. Ct. R. 606(a) (Mar. 12, 2021). " 'It is a basic rule of law in Illinois that *** the proper filing of a notice of appeal causes the jurisdiction of the reviewing court to attach instantaneously and concomitantly deprives the trial court of jurisdiction of the cause.' " *Daley v. Laurie*, 106 Ill. 2d 33, 38 (1985) (quoting *People v. Baker*, 85 Ill. App. 3d 661, 662 (1980), and citing *People v. Carter*, 91 Ill. App. 3d 635, 638 (1980), and *People v. Brigham*, 47 Ill. App. 2d 444, 452 (1964)).

¶ 22 We now turn to the defendant's argument that the circuit court was later revested with jurisdiction. As noted by our supreme court, the terms of the doctrine are narrow and applicable to "revest a court which has general jurisdiction over the matter with both personal and subject matter jurisdiction over the particular cause after the 30-day period following final judgment during which post-judgment motions must ordinarily be filed." *People v. Kaeding*, 98 Ill. 2d 237, 240 (1983). For the doctrine to apply, " 'the parties must actively participate without objection in proceedings which are inconsistent with the merits of the prior judgment.' " *People v. Bailey*, 2014 IL 115459, ¶ 9 (quoting *Kaeding*, 98 Ill. 2d at 241). The defendant argues, as detailed above, that the revestment doctrine applies and that all three prongs of the doctrine are met in this case. However, the defendant's reliance on revestment is misplaced.

¶ 23 In *Wierzbicki v. Gleason*, 388 Ill. App. 3d 921 (2009), the appellate court rejected defendant’s arguments, calling the defendants’ reliance on the revestment doctrine misplaced. *Id.* at 928. The court found that the doctrine was inapplicable to a case where the trial court enters an order of substance during the pendency of an appeal. *Id.* The appellate court cited a list of cases holding that any order on a matter of substance entered by a court having lost jurisdiction pending an appeal is void. *Id.* at 926-27. The court also cited a list of cases holding that the narrow revestment doctrine only applies where the circuit court loses jurisdiction over a matter because of the passage of time after a judgment. *Id.* at 928-29. The court opined that “[a]ny extension of the doctrine of revestment, as now urged by defendants, would be inconsistent with the settled legal principles that a party may challenge a void order at any time and that such a claim may not be waived.” *Id.* at 929-30.

¶ 24 Here, we have a factually similar scenario to that in *Wierzbicki* where the circuit court *sua sponte* attempted to reverse the finality of a prior judgment after a notice of appeal was perfected, as previously determined above. On appeal, the State explicitly challenges the validity of the circuit court’s rulings or orders after the defendant filed his notice of appeal on September 12, 2022, and argues they are void. The parties only reengaged and began filing further pleadings in the circuit court when it entered a *sua sponte* order on October 7, 2022, ordering compliance with Supreme Court Rule 604(d) and that the defendant’s appeal be “stayed” until the proceedings on the defendant’s motion are final. We note that based on our findings above, the circuit court had already lost jurisdiction and had no authority to enter the October order. After the trial court enters a final judgment, the court retains jurisdiction for 30 days. *Harchut v. Oce/Bruning, Inc.*, 289 Ill. App. 3d 790, 793 (1997). Generally, 30 days after the trial court enters a final judgment, the court loses jurisdiction, and the court may not review its judgments. *Faust v. Michael Reese Hospital & Medical Center*, 79 Ill. App. 3d 69, 72 (1979); *In re Marriage of Adamson*, 308 Ill.

App. 3d 759, 764 (1999). Further, we can find no authority in Illinois law that allows a circuit court to “stay” a notice of appeal. The circuit court may strike a premature notice of appeal pursuant to Supreme Court Rule 606(b); however, the order explicitly attempts to “stay” the notice of appeal.

¶ 25 The *sua sponte* October order led to additional proceedings and rulings that occurred on April 19, 2023. On appeal, the defendant only asserts arguments related to the proceedings and rulings that stemmed from the April 19, 2023, hearing,¹ after his notice of appeal. Having determined that the defendant perfected a notice of appeal on September 12, 2022, the circuit court did not have subject matter jurisdiction to enter any orders or judgments thereafter and they are void, including the *sua sponte* October order and the oral pronouncements at the April hearing. Thus, we decline to extend the doctrine of revestment to apply under the circumstances and find that any orders or rulings entered subsequent to the defendant’s notice of appeal filed on September 12, 2022, are void and hereby vacated. “A void judgment, order or decree of a court will be reversed on appeal whenever brought before the court by any means possible in the particular case.” *People v. Magnus*, 262 Ill. App. 3d 362, 365 (1994). This court has a duty to vacate void judgments and orders based upon its inherent power “to expunge from its records void acts of which it has knowledge” and consequently may *sua sponte* vacate a void order. *Id.*

¶ 26 In addition, even if revestment would have been applicable here, the defendant’s conduct after the August order and his notice of appeal, arguably did not amount to active participation without objection in the litigation to invoke operation of the doctrine. After the circuit court’s October order was entered, the record clearly indicates the defendant filed objections to the circuit court’s attempt to stay his appeal and continue with additional proceedings. On February 1, 2023,

¹We again note that there is no written order regarding the hearing held on April 19, 2023, but that the circuit court made oral pronouncements on the record.

the defendant filed a *pro se* letter to the circuit court and a motion to proceed *pro se*. In his *pro se* letter, the defendant stated, “I am further OBJECTING to the courts attempt to ‘stay’ my appeal ***.” (Emphasis in original.) In addition, the defendant stated in his motion to proceed *pro se* that the circuit court’s decision to “stay” his appeal conflicts with his interests in the case. Though the defendant later participated in the subsequent proceedings, the defendant clearly asserted his objection to additional proceedings and his position that the August order was a final and appealable order. Further, when the circuit court determined at the April hearing that the defendant was not asserting any new grounds for withdrawing his guilty plea other than his previous ineffective claims, the State referred to the August order and argued that the “matter [had] already been decided, [and] there is nothing more to be done in the trial court to resolve the claim.” The circuit court agreed and stated that it still stood by that ruling. Thus, the circuit court’s ruling at the April hearing related back to the August 12, 2022, order, and it cannot be said that the State took a position inconsistent with the August order when it ultimately relied on that order as final.

¶ 27 Having held that any orders or rulings after September 12, 2022, are void and must be vacated and that the doctrine of revestment does not apply, the only order we have jurisdiction to consider is the August 12, 2022, order. The defendant raises an alternative argument in his brief concerning defense counsel’s failure to file a Rule 604(d) certificate. We note that at no point in the postplea proceedings has a 604(d) certificate been filed. Whether counsel complied with Rule 604(d) is a legal question that is reviewed *de novo*. *People v. Gorss*, 2022 IL 126464, ¶ 10.

¶ 28 Illinois Supreme Court Rule 604(d) states, in pertinent part:

“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. ***

*** 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.” Ill. S. Ct. R. 604(d) (eff. July 1, 2017).

¶ 29 It is well settled that defense counsel must strictly comply with the certification requirements of Rule 604(d), and that the failure to so comply requires reversal of the judgment denying the defendant’s motion to withdraw his guilty plea, and remand. *People v. Willis*, 2015 IL App (5th) 130020, ¶¶ 16-24.

¶ 30 Here, there was no 604(d) certificate ever filed by the defendant’s attorney at any point. Defense counsel was not alleviated of the requirements of Rule 604(d) despite the fact that only claims of ineffective assistance of counsel were asserted in the defendant’s motion to withdraw his guilty plea. Though the circuit court determined there was no merit to the defendant’s ineffective claims, the defendant’s claims were entrenched in a motion to withdraw his guilty plea which invokes Rule 604(d). Thus, defense counsel should have complied with the rule, including filing a certificate with the circuit court. Accordingly, we reverse the circuit court’s August 12, 2022, order and remand for additional proceedings.

¶ 31 **III. CONCLUSION**

¶ 32 Therefore, for the foregoing reasons, we find that any orders or rulings that occurred after the defendant’s notice of appeal filed on September 12, 2022, are void and thus vacated. With respect to the circuit court’s August 12, 2022, order, denying the defendant’s motion to withdraw

his guilty plea, we reverse and remand with instructions for the circuit court to appoint the defendant new counsel and to comply with Rule 604(d).

¶ 33 Cause reversed and remanded with directions.