2024 IL App (4th) 231492-U

NOS. 4-23-1492 & 4-23-1493 cons.

FILED
November 4, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LOREN W. JASPER, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Mercer County Nos. 13CF5 13CF64 Honorable Matthew W. Durbin, Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court.
Presiding Justice Cavanagh and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: (1) In appeal No. 4-23-1492, the appellate court granted appellate counsel's motion to withdraw and affirmed the trial court's judgment, as no issue of arguable merit could be raised on appeal.

(2) In appeal No. 4-23-1493, the appellate court dismissed the appeal because the trial court lacked jurisdiction to address the filings at issue.

¶ 2 Defendant, Loren W. Jasper, has filed appeals in two cases. Appeal No. 4-23-1492 (Mercer County case No. 13-CF-64) is from the trial court's denial of defendant's motion for leave to file a successive postconviction petition. See 725 ILCS 5/122-1(f) (West 2022) (restricting the filing of successive postconviction petitions). Appeal No. 4-23-1493 (Mercer County case No. 13-CF-5) relates to the court's denials for relief on two motions: the first was entitled a "motion to resentence per 725 ILCS 5/123," which invoked section 123 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/123 (West 2020) (renumbered as 725 ILCS 5/122-9 by Pub. Act 102-

813 § 625 (eff. May 13, 2022)); the second was a motion in arrest of judgment (see 725 ILCS 5/116-2 (West 2020)).

¶ 3 In both appeals, the Office of the State Appellate Defender (OSAD) was appointed to represent defendant. OSAD has now moved to withdraw as counsel in both appeals on the grounds no issue of arguable merit can be raised in either appeal. On our own motion, this court consolidated the appeals. After reviewing the records, in appeal No. 4-23-1492, we grant OSAD's motion and affirm the trial court's judgment, and in appeal No. 4-23-1493, we dismiss the appeal for lack of jurisdiction in the trial court, which renders OSAD's motion moot.

¶ 4 I. BACKGROUND

¶ 5 A. The Bench Trial

¶ 6 In case No. 13-CF-5, defendant was charged with aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2010)) and criminal sexual assault (*id.* § 12-13(a)(4)). The final information charged defendant with four counts of criminal sexual assault of "Jane Doe" and one count of aggravated criminal sexual assault of "Jane Doe." (The victim in case No. 13-CF-5 testified at trial. In the ensuing direct appeal, the Third District panel referred to her as "C.W." (*People v. Jasper*, 2017 IL App (3d) 140356-U, ¶ 4), as do we.) Counts I and II of this information, both aggravated-criminal-sexual-assault counts, alleged defendant "held a position of care taking and trust in relation to [C.W.]" In case No. 13-CF-64, defendant was charged with two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2008)); one act of abuse allegedly occurred in June 2009 and the other in April 2009. The final amended information named the victim as "Jane Doe," but the preceding informations referred to her as "C.T.," (as did the Third District in the direct appeal (*id.*)), and therefore we will also refer to her as C.T.).

¶ 7 Defendant had separate bench trials in October 2013. In case No. 13-CF-64, the trial court found him guilty of aggravated criminal sexual abuse. In case No. 13-CF-5, the court found him guilty of criminal sexual assault as charged in counts I and II and of aggravated criminal sexual abuse. At a consolidated sentencing hearing, the court sentenced defendant to 6 years' imprisonment in case No. 13-CF-64 and 28 years' imprisonment in case No. 13-CF-5. Defendant filed timely notices of appeal, and the cases were consolidated on appeal.

¶ 8 B. The Direct Appeal and the Remand for Resentencing in Case No. 13-CF-5

¶ 9 In January 2017, the Third District decided defendant's direct appeal. The court held in case No. 13-CF-5, "the evidence failed to establish that C.W. had placed her trust in defendant or would obey him." *Id.* ¶ 33. Therefore, the State failed to sustain its burden of proof as to the two aggravated criminal sexual abuse convictions in case No. 13-CF-5; the Third District thus reversed those convictions and remanded the cause for resentencing on the remaining count—aggravated sexual abuse. *Id.* ¶¶ 33-35, 48. In case No. 13-CF-64, it held the trial court had not considered an improper sentencing factor when it deemed the psychological harm C.T. had suffered as an aggravating factor. *Id.* ¶ 43. It further corrected the judgment sheet to be in agreement with the court's written and oral orders. *Id.* ¶ 46.

¶ 10 On remand, the trial court initially sentenced defendant to 14 years' imprisonment in case No. 13-CF-5, to be served consecutively to the sentence in case No. 13-CF-64. However, the court *sua sponte* reconsidered the sentence and, in July 2017, reduced it to a consecutive seven-year sentence.

¶ 11 C. Defendant's Original Postconviction Petition

¶ 12 In May 2016, while defendant's direct appeal was still pending in the Third District, he filed a petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2016)), which raised claims in both cases. He asserted (1) trial counsel had been ineffective for failing to call any witnesses on his behalf and failing to investigate exculpatory evidence, which would, in essence, tend to establish an alibi, and (2) appellate counsel was ineffective for failing to raise this claim.

¶ 13 In May 2019, defendant's postconviction attorney, Aaron Dyer, filed an "Amended Petition for Post-Conviction Relief," which, despite its name, set forth counsel's reasons for deeming defendant's claims and potential claims to be without merit and requested he be allowed to withdraw as counsel. The trial court allowed counsel to withdraw and appointed a new attorney, Johathan Ruud. Ruud moved to withdraw, citing Dyer's analysis. The State, adopting Dyer's analysis, asked the court to dismiss defendant's petition. The court dismissed defendant's petition in February 2021. Defendant appealed to the Third District in March 2021, but later voluntarily dismissed the appeal.

¶ 14 D. Defendant's Other Motions

¶ 15 1. *Defendant's Motion to Resentence*

¶ 16 In August 2021, defendant filed a "motion to resentence per 725 ILCS 5/123" in case No. 13-CF-5. (As mentioned, section 123 of the Code (725 ILCS 5/123 (West 2020)) was renumbered as section 122-9 (725 ILCS 5/122-9 (West 2022)), and we will refer to it as section 122-9.) In his motion, defendant discussed his behavior while incarcerated and health concerns. He requested his sentence in case No. 13-CF-5 be made concurrent to his sentence in case No. 13-CF-64.

¶ 17 The State filed an objection to defendant's motion, noting section 122-9 permits the state's attorney to, at any time, " 'petition the sentencing court or the sentencing court's successor to resentence the offender if the original sentence no longer advances the interests of justice' " (quoting 725 ILCS 5/122-9(b) (West 2020)). The State asserted only the state's attorney is entitled to file motions under section 122-9.

¶ 18 2. *Defendant's Motion in Arrest of Judgment*

¶ 19 Also in August 2021, defendant filed a motion in arrest of judgment (see 725 ILCS 5/116-2 (West 2020)) in case No 13-CF-5. He asserted, as to the surviving count in the case, "[T]he charging instrument does not charge an offense, or in the alternative, to the extent it does charge an offense, that offense is not one subject to the jurisdiction of this Court." He asserted the information (1) did not "apprise [him] clearly of the charge against him" and was so vague it prejudiced his ability to prepare for trial, (2) failed to set out all the elements of the offense, (3) violated section 111-3 of the Code (725 ILCS 5/111-3 (West 2020)) by failing to name the victim of the offense, (4) received its final amendment 236 days after his arrest, (5) charged two types of conduct, and (6) made the proof of locale an element of the offense by alleging the offense took place in Mercer County.

¶ 20 The State filed an objection to this motion; it asserted, under section 116-2 of the Code, a motion in arrest of judgment must be filed within 30 days of the entry of a "guilty" verdict or a finding of defendant's guilt.

¶ 21 Defendant responded to the objection, arguing in part his motion was timely if the court considered it as a petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2020)). He cited, *inter alia*, *In re Estate of Ostern*, 2014 IL App (2d) 131236, ¶ 17,

which noted Illinois law provides a judgment entered by a court lacking jurisdiction—and therefore void—can be challenged collaterally at any time.

¶ 22 Defendant also argued his filing should *necessarily* be considered a section 2-1401 petition and thus should be addressed under the procedural rules applicable to such a filing. Thus, for instance, he argued the State should be deemed in default for failing to file a timely response.

¶ 23 3. *Defendant's "Motion of Innocence"*

¶ 24 In November 2022, in case No. 13-CF-64, defendant filed a *pro se* "Motion of Innocence Under 725 ILCS 5/122-1 and Request for Polygraph/Voice Stress Test." He noted C.T. had testified she was 15 years old when the sexual abuse occurred. He further asserted, if the trial court allowed him to take a "polygraph/voice stress test," it would prove his innocence by showing C.T. was at least 18 years old when his only sexual contact with her occurred. The filing also discussed cases setting out standards for claims of ineffective assistance of counsel. Defendant asserted he would "prove with a Polygraph/Voice Stress Test that his Attorneys were ineffective and that the results of the trial would have been different had [he] been allowed to take Polygraph/Voice Stress Test. Those results would of [*sic*] proven his innocence." He therefore requested the court "[g]rant his request for a Polygraph/Stress Test."

¶ 25 4. *The Trial Court's Rulings on Defendant's Motions*

¶ 26 On November 13, 2023, defendant appeared with the attorney who was his counsel in case No 13-CF-5. The trial court addressed both matters relating to case No 13-CF-5 and defendant's "request" in case No. 13-CF-64. The State explained the motion to resentence and motion in arrest of judgment were, respectively, inappropriate and untimely. It then described defendant's *pro se* motion of innocence as "essentially *** a 1401 motion pursuant to 725 ILCS 5/122-1." It noted defendant could file a second postconviction petition only by leave of court, and

to obtain leave, he would have to "demonstrate[ ] a cause for bringing [his] claim outside of the initial postconviction proceeding and that prejudice results from that failure and then lists the reasons in which that could happen." The State contended defendant had failed to file the necessary motion for leave to file a successive petition, but, in any event, the filing was untimely. The court dismissed all three filings, stating, "Motion will not be heard. I can't. Doesn't allow me to. It was dismissed once. Blew the time frames on the rest. There's no relief that can be granted by this court based upon the subsequent filings."

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 OSAD filed motions to withdraw as counsel and supporting briefs in compliance with *Pennsylvania v. Finley*, 481 U.S. 551 (1987), in both appeals. OSAD has provided defendant copies of its motions and supporting memoranda. This court, in both appeals, granted defendant leave to file additional points and authorities on or before June 11, 2024. Defendant has not responded in either appeal. For the reasons which follow, we grant OSAD's motion to withdraw and affirm the trial court's judgment in case No. 4-23-1492, and we dismiss the appeal in case No. 4-23-1493.

¶ 30 A. The "Motion of Innocence"

¶ 31 OSAD contends it would be frivolous to argue the trial court erred in denying relief based on defendant's "Motion of Innocence." We agree.

¶ 32 1. *The Standard for First-Stage Dismissal of a Postconviction Petition*

¶ 33 "A postconviction proceeding not involving the death penalty contains three distinct stages." *People v. Hodges*, 234 Ill. 2d 1, 10 (2009).

> "At the first stage, the circuit court must, within 90 days of the petition's filing, independently review the petition, taking the allegations as true, and determine whether 'the petition is frivolous or is patently without merit.' [Citations.] If the court determines that the petition is either frivolous or patently without merit, the court must dismiss the petition in a written order. [Citation.] If the court does not dismiss the petition as frivolous or patently without merit, then the petition advances to the second stage." *Id.*

To avoid first-stage dismissal, "a *pro se* defendant [need only] allege enough facts to make out a claim that is arguably constitutional for purposes of invoking the Act." *Id.* at 9. Review of the first-stage dismissal of a postconviction petition is *de novo*. *Id.*

¶ 34 A trial court may dismiss a postconviction petition on the basis it was untimely filed, but only on the State's motion at the second stage. *People v. Boclair*, 202 Ill. 2d 89, 101-02 (2002). A petition's untimely filing is an affirmative defense, and the State has the choice of whether to raise or waive this defense. *Id.* "If an untimely petition demonstrates that a defendant suffered a deprivation of constitutional magnitude, a dutiful prosecutor may waive that procedural defect during the second stage of the post-conviction proceedings." *Id.* Consequently, untimeliness is not a proper basis for first-stage dismissal. *Id.*

¶ 35 2. *The Standard for Filing a Successive Postconviction Petition*

¶ 36 A defendant may file only a single postconviction petition unless he or she receives leave of the trial court to file a successive petition. 725 ILCS 5/122-1(f) (West 2022). The court may grant leave only if the defendant shows "cause for his or her failure to bring the claim in his or her initial post-conviction proceedings and prejudice result[ing] from that failure." *Id.*

> "For [these purposes]: (1) a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings; and (2) a prisoner shows prejudice by demonstrating that the claim not raised during his or her initial post-conviction proceedings so infected the trial that the resulting conviction or sentence violated due process." *Id.* § 122-1(f)(1), (2).

A court may also give a defendant leave to file a successive petition if he or she "asserts a fundamental miscarriage of justice based on actual innocence." *People v. Robinson*, 2020 IL 123849, ¶ 42. "To establish a claim of actual innocence, the supporting evidence must be (1) newly discovered, (2) material and not cumulative, and (3) of such conclusive character that it would probably change the result on retrial." *Id.* ¶ 47.

¶ 37 "[T]he cause-and-prejudice determination [is] made on the pleadings prior to the first stage of postconviction proceedings." *People v. Smith*, 2014 IL 115946, ¶ 33. "To meet the cause-and-prejudice test for a successive petition requires the defendant to 'submit enough in the way of documentation to allow a circuit court to make that determination.' " *Id.* ¶ 35 (quoting *People v. Tidwell*, 236 Ill. 2d 150, 161 (2010)). A defendant's motion for leave to file a successive petition should be denied "when it is clear, from a review of the successive petition and the documentation submitted by the petitioner, that the claims alleged by the petitioner fail as a matter of law or where the successive petition with supporting documentation is insufficient to justify further proceedings." *Id.* However, section 122-1(f) does not expressly require a separate motion for leave to file a successive petition before the court grants the defendant leave. 725 ILCS 5/122-1(f) (West 2022). Moreover, at least in some circumstances, courts may consider filings as successive petitions even in the absence of a motion. See *People v. Pearson*, 216 Ill. 2d 58, 68

(2005) (allowing courts to recharacterize filings as successive postconviction petitions provided certain procedures are followed).

¶ 38 Review of a denial of leave to file a successive petition is *de novo*, regardless of whether the request for leave is based on cause and prejudice or a claim of actual innocence. *Robinson*, 2020 IL 123849, ¶ 39.

¶ 39 3. *State Participation in Addressing a Successive Postconviction Petition*

¶ 40 The Act does not authorize the State to participate in the initial decision relating to successive postconviction petitions—neither deciding whether the trial court should grant leave to file the petition nor, if leave is granted, whether it is subject to first-stage dismissal. However, the consequences of improper participation are different depending on whether it happens at the leave-to-file phase or the first stage. Our supreme court, in *People v. Bailey*, 2017 IL 121450, ¶ 25, held section 122-1(f) of the Act does not authorize State involvement in the trial court's decision whether to grant a motion for leave to file a successive petition. However, the *Bailey* court declined to order a remand in the case under appeal. It deemed judicial economy was not served by remanding the matter when the motion at issue failed to allege facts sufficient to make "even a cursory showing of cause and prejudice." *Id.* ¶ 42. However, when a court is considering a successive postconviction petition under first-stage review, "reversal is required where the record shows that the circuit court sought or relied on input from the State when determining whether the petition is frivolous." *People v. Gaultney*, 174 Ill. 2d 410, 419 (1996); see 725 ILCS 5/122-2.1(a)(2) (West 2022) (If "the court determines the petition is frivolous or is patently without merit, it shall dismiss the petition in a written order" within 90 days of the petition's filing.).

¶ 41 Because the State is not authorized to participate at the leave-to-file phase (*Bailey*, 2017 IL 121450, ¶ 25), and because untimeliness is an affirmative defense the State may choose to either raise or waive at the second stage (*Boclair*, 202 Ill. 2d at 101-02), it follows that untimeliness is not a proper basis for a trial court to decline leave to file.

¶ 42 4. *This Case*

¶ 43 On appeal, OSAD considered raising whether (1) remand is necessary based on the State's arguably improper participation in the trial court's consideration of the filing or (2) the motion stated a basis upon which the court could grand defendant leave to file a successive postconviction petition. Although our analysis varies somewhat from OSAD's, we agree no meritorious issue is presented by this appeal.

¶ 44 a. Categorization of the Filing

¶ 45 Neither defendant's filing nor the trial court's rejection of it fit conveniently into standard categories. We explain why the law required the court to treat defendant's filing as a postconviction petition and why the court's rejection of the filing is best considered a denial of leave to file.

¶ 46 Defendant's filing cited the Act but was not clearly labeled as either a postconviction petition or a motion for leave to file a successive postconviction petition. It was captioned as a "Motion of Innocence under 725 ILCS 5/122-1 and request For Polygraph/Voice Stress Test." In substance, it is perhaps closest to a "Motion for fingerprint, Integrated Ballistic Identification System, or forensic testing not available at trial or guilty plea regarding actual innocence" under section 116-3 of the Code (725 ILCS 5/116-3 (West 2022)); the filing requests forensic testing of a sort, albeit testing with results our courts deem inadmissible (*e.g.*, *People v. Jefferson*, 184 Ill. 2d 486, 492 (1998)), but it does not explicitly request other relief.

¶ 47 We conclude the citation to the Act in the document's caption and the absence of a request for leave to file a successive petition required the trial court to address the filing as a successive postconviction petition. A document captioned as a postconviction petition should, under section 122-1(d) of the Act, be treated as a petition under the Act. *People v. McDonald*, 373 Ill. App. 3d 876, 880 (2007). Similarly, a filing containing a request the trial court consider giving relief under the Act is sufficient to require such consideration. *People v. Weber*, 2021 IL App (2d) 190841, ¶¶ 13-15. Here, defendant neither captioned his filing as a petition nor explicitly asked for relief under the Act. However, we deem his direct citation of section 122-1 of the Act in the caption sufficient under *McDonald* to require the court to consider the filing as one under the Act. Further, the court had to consider it as a successive postconviction *petition*, as the filing did not request leave to file a successive petition and thus cannot have been a *motion* for leave to file a successive petition.

¶ 48 b. State Participation

¶ 49 The State's participation here was improper, but it was not a basis for mandatory reversal. Initially, the trial court appears to have been uncertain how to classify defendant's filing. We see no reason the State could not consult on this issue, especially given defendant and counsel were present, so the discussion was not *ex parte*. Here, though, the State suggested the filing, as a petition under the Act, should be dismissed as untimely, input the court evidently considered when it decided the filing was untimely. Under *Bailey*, 2017 IL 121450, ¶ 25, and *Gaultney*, 174 Ill. 2d at 419, the State should not have addressed the proper disposition of the filing, and the court should not have considered this input. Whether the court's consideration of the State's input requires a remand depends on whether the trial court denied leave to file the petition (see *Bailey*, 2017 IL 121450, ¶ 42) or dismissed the petition at the first stage (see *Gaultney*, 174 Ill. 2d at 419).

¶ 50 c. The Trial Court's Ruling

¶ 51 We deem the trial court's rejection of defendant's petition to have been equivalent to the denial of leave to file a successive petition. The court stated: "Motion will not be heard. I can't. Doesn't allow me to. It was dismissed once. Blew the time frames on the rest. There's no relief that can be granted by this court based upon the subsequent filings." The court's statement the motion would "not be heard" makes clear the court was not addressing the petition's specific claims. This is equivalent to declining to allow the petition's filing.

¶ 52 Because the trial court's ruling was the equivalent of declining to allow the petition to be filed, we apply the rule in *Bailey*, not the rule in *Gaultney*, and we thus address the merits of the court's ruling despite improper State participation.

¶ 53 d. The Trial Court Did Not Err in Declining Leave to File

¶ 54 Here, the trial court declined leave to file the petition because the petition was untimely. This was improper. See *supra* ¶ 41. However, we can affirm a denial of leave to file a successive petition on any grounds supported by the record. See, *e.g.*, *People v. Wilson*, 2014 IL App (1st) 113570, ¶ 41 (A reviewing court may affirm *the denial* of a postconviction petition on any basis supported by the record.).

¶ 55 We agree with OSAD it would be frivolous to argue the trial court should have given defendant leave to file the petition. Defendant made no attempt to establish cause and prejudice. Defendant did suggest he could make an actual innocence claim, but only with evidence he had not yet acquired—the requested polygraph and voice stress tests. This was patently insufficient. A viable claim of actual innocence requires "supporting evidence *** of such conclusive character that it would probably change the result on retrial." *Robinson*, 2020 IL 123849, ¶ 47. Nonexistent evidence cannot be conclusive at all.

¶ 56 B. The Motions for Resentencing and in Arrest of Judgment

¶ 57 OSAD also argues there are no issues of arguable merit as to defendant's other motions. However, before we consider whether there are claims of arguable merit, we must consider whether this court has jurisdiction to hear the claims. *People v. Smith*, 228 Ill. 2d 95, 104 (2008) ("A reviewing court has an independent duty to consider issues of jurisdiction, regardless of whether either party has raised them."); *People v. Flowers*, 208 Ill. 2d 291, 307 (2003) (Where the trial court lacks jurisdiction, "the appellate court, in turn, ha[s] no authority to consider the merits of [the] appeal.").

¶ 58 We hold the trial court lacked jurisdiction to address defendant's motion for resentencing and motion in arrest of judgment. We thus must dismiss the appeal rather than offer any substantive holding. See *Flowers*, 208 Ill. 2d at 303.

¶ 59 Under the rules usually applicable, "a trial court loses jurisdiction to hear a cause at the end of the 30-day window following the entry of a final judgment." *People v. Bailey*, 2014 IL 115459, ¶ 8. The court last had jurisdiction relating to the judgment in case No 13-CF-5 in February 2021, when it dismissed defendant's original postconviction petition. Defendant did not file the two motions at issue until August 2021, well past the 30 days during which the court would retain jurisdiction. The court thus did not have jurisdiction in the case when defendant filed his motions.

¶ 60 An untimely filed motion does not revest the trial court with jurisdiction, except in certain unusual circumstances not applicable here. *Id.* ¶ 25. Our supreme court has specifically held a court's jurisdiction to entertain a defendant's motion to reconsider the sentence lapses 30 days after the court imposes its sentence (*Flowers*, 208 Ill. 2d at 303), and a defendant's untimely motion to reconsider his sentence does not revest the court with jurisdiction (*id.* at 306). Further,

as we discuss, a motion in arrest of judgment does not fall into any recognized exception to the rules regarding lapse and revestment of jurisdiction.

¶ 61 Defendant's labeling his motion for reconsideration of his sentence as one under section 122-9 of the Code did not allow him to file it at any time. To be sure, *the State* may file a section 122-9 motion "[a]t any time upon the recommendation of the State's Attorney." 725 ILCS 5/122-9(b) (West 2022). However, section 122-9 does not accord the same right to a defendant. The section is captioned "Motion to resentence by *the People*." (Emphasis added.) *Id.* § 122-9. Its introductory portion explains the legislature's reasoning for granting the power to the state's attorney. *Id.* § 122-9(a). The section explicitly provides only state's attorneys may petition for resentencing under the section. *Id.* § 122-9(b). Therefore, defendant could not have filed a motion under section 122-9, regardless of how it is titled. The character of a motion "is determined by its content or substance, not by the label placed on it by the movant." *People v. Patrick*, 2011 IL 111666, ¶ 34. Because section 122-9 motions must be filed by the state's attorney, defendant's motion was in substance an ordinary motion for reconsideration of the sentence. Therefore, it did not revest the trial court with jurisdiction. *Flowers*, 208 Ill. 2d at 306.

¶ 62 The trial court similarly had no jurisdiction to address the merits of defendant's motion in arrest of judgment. Section 116-2(a) of the Code provides: "A written motion in arrest of judgment shall be filed by the defendant within 30 days following the entry of a verdict or finding of guilty." 725 ILCS 5/116-2(a) (West 2022). A motion in arrest of judgment would have been untimely any time later than 30 days after the 2013 entry of defendant's guilty verdict. We need not address whether the court would have had jurisdiction to address the motion while it was addressing defendant's original postconviction petition; its jurisdiction in the matter had, as discussed above, lapsed by the time he filed his two motions in August 2021. Moreover, that

defendant's motion alleged the judgment was void did not revest the court with jurisdiction. See *Flowers*, 208 Ill. 2d at 308 ("Although a void order may be attacked at any time, the issue of voidness must be raised in the context of a proceeding that is properly pending in the courts.").

¶ 63 As the trial court lacked jurisdiction to entertain either motion at issue in appeal No. 4-23-1493, it properly dismissed the motions. See *Bailey*, 2014 IL 115459, ¶ 14. As we have no jurisdiction to consider the substantive merits of defendant's motions (*id.* ¶ 29), we must dismiss the appeal (see *Flowers*, 208 Ill. 2d at 303). This dismissal renders moot OSAD's motion to withdraw.

¶ 64 III. CONCLUSION

¶ 65 For the reasons stated, we conclude there are no issues of arguable merit defendant can raise in either appeal. Accordingly, we grant OSAD's motion to withdraw in appeal No. 4-23-1492 and affirm the trial court's judgment in case No. 13-CF-64. We dismiss appeal No. 4-23-1493.

¶ 66 No. 4-23-1492, Affirmed.

¶ 67 No. 4-23-1493, Dismissed.