CH. 52
VENUE & JURISDICTION

§52

Illinois Supreme Court

People v. Dyas, 2025 IL 130082 Defendant pled guilty. He filed a timely motion to withdraw the plea, which was denied. Within 30 days, he filed a motion to reconsider and waived counsel. Before this motion was decided, defendant filed a notice of appeal. He then moved to dismiss the appeal as premature and asked the court to remand for a ruling on the motion to reconsider. The appellate court granted the motion to dismiss and remanded the case. On remand, the court denied the motion to reconsider. Defendant appealed, arguing a denial of post-plea counsel and failure to provide 401(a) admonitions. The appellate court found a 401(a) violation, and the State appealed.

The supreme court held that the appellate court lacked jurisdiction over the appeal because defendant's notice of appeal was filed more than 30 days after the denial of his postjudgment motion, in violation of Rule 604(d). Defendant acknowledged that in **People v. Walls**, 2022 IL 127965, the supreme court held that a motion to reconsider does not toll the 30-day deadline for the filing of a notice of appeal. But he argued that his motion pre-dated **Walls**, and at that time, the Fifth District's decision in **People v. Feldman**, 409 Ill. App. 3d 1124 (2011), held that a motion to reconsider tolled the deadline. The supreme court disagreed. Under **Walls**, the **Feldman** court never had jurisdiction to enter its ruling. Also, it wouldn't be reasonable for defendant, who was in the Third District, to rely on a Fifth District decision that conflicted with existing Third District opinions, such as **People v. Kibbons**, 2016 IL App (3d) 150090. Moreover, the fact that defendant initially filed a timely notice of appeal did not alter the court's analysis, because that appeal was voluntarily dismissed by defendant.

The supreme court rejected the parties' request to exercise supervisory authority to resolve the issue of whether Rule 401(a) applies to postjudgment proceedings. Generally, supervisory orders are issued "only when the normal appellate process fails to provide adequate relief and the issue in dispute is 'a matter important to the administration of justice, or where intervention is necessary to keep an inferior court or tribunal from acting beyond the scope of its authority.'" Here, defendant had an adequate avenue for relief but neglected to pursue it. Nor was there a need to further intervene to prevent a lower court from exceeding its authority, as the court already vacated the appellate court judgment.

People v. Ratliff, 2024 IL 129356 Defendant was charged with robbery. At arraignment, the court informed him of the charge and sentencing range. About 11 weeks later, he waived counsel. The court did not re-admonish him of the charge and sentencing range, in accordance with Rule 401(a), before accepting the waiver. He later entered an open plea. After sentencing, he filed a *pro se* motion to withdraw the plea, but, after appointment of counsel, he withdrew the motion and instead filed a motion to reconsider sentence. The trial court denied the motion and defense counsel filed a notice of appeal.

The notice of appeal included the offense, sentence, and, in a separate paragraph, stated: "If appeal is not from a conviction, nature of order appealed from: MOTION TO RECONSIDER SENTENCE." About six months later, appellate counsel moved to file an amended notice of appeal without this paragraph. The appellate court granted the motion. On appeal, defendant argued that the trial court failed to comply with Rule 401(a). The

appellate court affirmed, and the supreme court granted defendant's petition for leave to appeal.

A five-justice majority held that the appellate court lacked jurisdiction to review the waiver of counsel claim. The notice of appeal specifically stated that the appeal was not from a conviction but rather from his motion to reconsider sentence. "In criminal cases, '[a] notice of appeal confers jurisdiction on an appellate court to consider only the judgments or parts of judgments specified in the notice." Thus, the only reviewable issue was the ruling on the motion to reconsider sentence.

While defendant attempted to amend the notice of appeal to remove this paragraph, that motion was untimely. Illinois Supreme Court Rule 606(d) states that a notice of appeal in a criminal case may be amended as provided in Rule 303(b)(5). Rule 303(b)(5) states that a notice of appeal may be amended without leave of court within the initial 30-day period to file an appeal, and "may be amended only on motion, in the reviewing court, pursuant to paragraph (d) of this rule." Rule 303(d) grants 30 additional days to file an amended notice of appeal upon motion "supported by a showing of reasonable excuse." Here, defendant's amended notice of appeal was filed beyond those 60 days, and the rule provides that, at that point, "the appellate court lacks jurisdiction to permit any further amendment of the notice of appeal."

Two justices would have found the court had jurisdiction because a notice of appeal in a criminal case should be liberally construed. Notices of appeal generally confer jurisdiction on the reviewing court to consider not just the judgment listed, but all of the rulings that constitute a step in the procedural progression leading to that judgment.

People v. Fukama-Kabika, 2023 IL 128824 Defendant was found guilty of, *inter alia*, two counts of criminal sexual assault (counts I and IV). This offense requires an MSR term of three years to natural life. The trial court correctly informed defendant of the MSR term before trial, but the written sentencing order stated that the MSR term would be "3 years."

While the case was on appeal, a prison records officer informed the prosecution that the written sentencing order omitted the "to natural life" portion of the required MSR term. The prosecutor informed the trial court, which issued a new sentencing order with the three-years-to-natural-life MSR terms, *nunc pro tunc* to the original sentencing date.

On appeal from the dismissal of defendant's post-conviction petition, defendant argued that the trial court lacked jurisdiction to issue the new sentencing order. The appellate court disagreed, holding that the trial court's failure to do so was a clerical error, which it had jurisdiction to correct pursuant to Rule 472(a)(4).

The supreme court agreed with the appellate court. The distinction between a clerical error and a judicial error depends upon whether it was the deliberate result of judicial reasoning and determination. Here, the trial court provided defendant with the correct MSR term before trial. It follows that the omission of the "to natural life" phrase from the sentencing order was an oversight properly deemed clerical error. Defendant cited **People v. Lake**, 2020 IL App (1st) 170309, where the supreme court found correction of the sentencing order to be substantive rather than clerical. But in **Lake,** the trial court informed defendant of the incorrect MSR term during plea negotiations, before changing the order to the mandatory MSR term. Thus, the entry of the incorrect term on the original written sentencing order was not a clerical mistake but a judicial mistake. Here, the trial court understood and advised defendant of the correct MSR term before trial, such that the incorrect term on the written sentencing order must have been a clerical mistake.

People v. Bochenek, 2021 IL 125889 Defendant was convicted of identity theft based on the unauthorized use of another person's credit card information to purchase cigarettes. The underlying transaction occurred at a gas station in Lake County, but defendant was charged in DuPage County under a provision in the venue statute which allows for the charge to be brought in the county where the victim resides. 720 ILCS 5/1-6(t)(3).

Defendant argued that section 1-6(t)(3) of the venue statute is unconstitutional under Article I, section 8 of the Illinois Constitution which provides that an accused has the right to be tried by a jury of the county in which the offense is alleged to have been committed. The Court disagreed.

Article I, section 8 does not limit venue to a single location. The legislature has the authority to define the place where a crime is committed and to enact specific venue statutes when warranted by the nature of the crime. Identity theft is committed where a person knowingly "uses any personal identifying information or personal identification document of another person to fraudulently obtain credit, money, goods, services, or other property." Identity theft involves the misappropriation of an individual's personal identifying information. A victim has a possessory interest in that information, and the legislature has deemed that interest to be located where the victim resides. At least part of the offense of identity theft has been committed where the victim lives because the victim's personal identifying information is located there.

The Court also rejected the assertion that a crime is committed only where the accused commits a physical act. It is the location of the offense, not the location of the offender, that controls. Defendant's position would have the absurd result of allowing an out-of-state individual to escape criminal liability in Illinois for identity theft committed against an Illinois resident.

Based on the nature of the offense of identity theft, Section 1-6(t)(3) does not violate the constitutional mandate that venue be set in the county where the offense is alleged to have been committed. Identity theft is committed both in the county where a defendant's acts occur and in the county where the victim resides.

People v. Matthews, 2016 IL 118114 Under Illinois Supreme Court Rule 105, when a defendant files a 2-1401 petition he must notify the State in person, by mail, or by publication. If by mail, service must be sent by certified or registered mail. Defendant filed a 2-1401 petition and served the State by regular first-class mail, not certified or registered mail. The circuit court dismissed the petition.

On appeal, defendant argued that the dismissal order was void because he failed to properly serve the State and thus the circuit court lacked personal jurisdiction over the State. The Supreme Court held that defendant lacked standing to challenge the circuit court's personal jurisdiction over the State.

Court's must have both subject-matter and personal jurisdiction to enter a valid judgment. Absent a general appearance, the court acquires personal jurisdiction only by proper service on the parties. Typically, however, an allegation that the court lacks personal jurisdiction based on improper service is raised by the respondent who did not receive notice of the proceedings. And personal jurisdiction, unlike subject-matter jurisdiction, may be waived. A party may object to personal jurisdiction or improper service only on behalf of itself. Here, only the State had standing to object to the court's lack of personal jurisdiction. Defendant thus could not raise this issue.

The Supreme Court dismissed defendant's 2-1401 petition.

People v. Castleberry, 2015 IL 116916 The issue of whether a judgment is void or voidable

presents a question of jurisdiction. Jurisdiction is a fundamental prerequisite to a valid judgment and any judgment rendered by a court that lacks jurisdiction is void and may be attacked at any time. By contrast, an erroneous judgment entered by a court having jurisdiction is merely voidable.

Jurisdiction generally consists of two parts: subject matter and personal jurisdiction. Subject matter jurisdiction refers to the court's power "to hear and determine cases of the general class to which the proceeding in question belongs." Personal jurisdiction refers to the court's power "to bring a person into its adjudicative process."

Decisions in Illinois have also held that the power to render a particular judgment is "as important an element of jurisdiction" as personal and subject matter jurisdiction. Based on this concept, Illinois courts have developed a rule holding that a circuit court acts without "inherent authority" or "inherent power" if it imposes a sentence that violates a statutory requirement. And since the court has acted without inherent power, it has acted without jurisdiction, making the sentence void. Accordingly, a sentence that does not conform to statutory requirements is void.

Defendant was convicted of two counts of aggravated criminal sexual assault. At sentencing, the State argued that defendant was subject to a mandatory 15-year sentencing enhancement on each count because he was armed with a firearm when he committed the offenses. The trial court imposed the add-on on one count, but refused to impose it on the second count.

Defendant appealed and, in response to an argument raised by the State, the Appellate Court held that the add-on was a mandatory statutory requirement that had to be added to each sentence. The court further held that a sentence which lacked the enhancement was void since it did not conform to statutory requirements.

The Illinois Supreme Court abolished the void sentence rule. It held that the "inherent power" idea of jurisdiction, on which the void sentence rule was based, was at odds with the grant of jurisdiction given to the circuit courts under Illinois' constitution. The constitution provides that circuits courts "shall have original jurisdiction of all justiciable matters." Ill. Const. 1970, art VI, § 9. Since jurisdiction is granted by the constitution, the failure to satisfy a statutory requirement cannot deprive the court of its power or jurisdiction to hear a cause of action. A judgement is void only if the court lacks jurisdiction over the parties or the subject matter.

Subject matter jurisdiction extends to all "justiciable matters." To invoke the court's "subject matter jurisdiction, a party need only present a justiciable matter, *i.e.*, a controversy appropriate for review by the court." This rule applies to criminal as well as civil cases since in granting jurisdiction Illinois' constitution does not distinguish between civil and criminal cases.

The Supreme Court reversed the Appellate Court's judgment increasing defendant's sentence by 15 years.

People v. Jones, 219 Ill.2d 1, 845 N.E.2d 598 (2006) At the time of defendant's trial, 725 ILCS 5/1-6 required the State to prove venue beyond a reasonable doubt. Although §1-6 was subsequently amended to remove the requirement that the State prove venue, the amendment made a substantive change in the law and could not be applied retroactively. But, the State proved venue. Accord**, People v. Digirolamo**, 179 Ill.2d 24, 688 N.E.2d 116 (1997). See also, **People v. Adams**, 161 Ill.2d 333,641 N.E.2d 514 (1994) (State proved venue in Cook County of trial for possession of a stolen motor vehicle where defendant gained exclusive control over the car in Cook County, and State proved venue in Cook County of trial of constructive possession of drugs found in an airplane bathroom where the drugs were

discovered in Cook County and there was proof that defendant constructively possessed the drugs); **People v. Allen**, 288 Ill.App.3d 502, 680 N.E.2d 795 (4th Dist. 1997) (in a trial that occurred before the effective date of PA 89-288 (August 11, 1995), which eliminated the requirement that the State prove that the offense occurred in the county in which the prosecution was brought, the State's failure to produce any evidence concerning the location of the alleged offense mandated reversal of one count of disorderly conduct); **People v. Gallegos**, 293 Ill.App.3d 873, 689 N.E.2d 223 (3d Dist. 1997) (the Illinois Constitution is not violated by 720 ILCS 5/1-6, which provides that the State is no longer required to prove venue beyond a reasonable doubt).

People v. Dunn, 52 Ill.2d 400, 288 N.E.2d 463 (1972) Place of trial is not jurisdictional and may be waived. See also, **People v. Ondrey**, 65 Ill.2d 360, 357 N.E.2d 1160 (1976) (defendant waived objection to venue by pleading guilty).

People v. Williams, 37 Ill.2d 521, 229 N.E.2d 495 (1967) Where there is no conflict between the caption and body of the charging document, the caption may be read as part of the body to allege venue.

People v. Blanchett, 33 Ill.2d 527, 212 N.E.2d 97 (1965) An indictment is sufficient if it charges that the offense occurred within the county. The location of the offense need not be more specifically given, such as by a street address. See also, **People v. Wallace**, 125 Ill.App.2d 455, 261 N.E.2d 214 (4th Dist. 1970) (indictment that failed to allege the county in which the offense occurred was properly dismissed by the trial court).

Illinois Appellate Court

People v. Henry, 2025 IL App (3d) 230137 Defendant was charged with attempt vehicular hijacking, aggravated vehicular carjacking, UUW/felon, and armed robbery. The crimes were initiated in Cook County, where defendant held up a man, tried to take his car but left with only his phone. He then hijacked another man's car before leading police on a high-speed chase into Will County, where he was eventually arrested and charged. Defendant moved to dismiss the charges for improper venue under article I, section 8 of the Illinois Constitution and 720 ILCS 5/1-6(a), arguing his trial must take place in Cook County where the crimes occurred.

The State conceded that the attempted vehicular hijacking took place entirely within Cook County, but insisted the remaining counts, while initiated in Cook County, were not "over" until defendant was apprehended in Will County. The State also argued that, because defendant kept the stolen cell phone until his arrest, he committed theft, an "element" of armed robbery, while in Will County. The Stat relied on **People v. Eggerman**, 292 Ill. App. 3d 644, 650-51 (1997), in support of this latter theory.

The appellate court found the reasoning of **Eggerman** contradicted the plain language of the Illinois Constitution and 720 ILCS 5/1-6(a) (venue is proper in the county "where the offense was committed"). Regardless, theft is not an element of armed robbery. While "taking" is an element, this act is defined differently than "theft", which requires an intent to permanently deprive. Nor did the police chase extend the crime. **See People v. Dennis**, 181 Ill. 2d 87, 103 (1998) (flight and escape are not elements of armed robbery, thus the offense is complete when force or threat of force causes the victim to part with property). Thus, Cook County was the only correct venue for armed robbery and vehicular hijacking.

As for UUW/felon, the defendant established a *prima facie* case that venue was improper in Will County because police did not discover a firearm at the time of his arrest. Thus, it became the State's burden to prove venue was proper by a preponderance of the evidence. As the State did not present evidence showing defendant possessed a gun in Will County, the venue was improper.

Finally, the court rejected the State's harmless error argument, which it labeled an issue of first impression. The appellate court held that trial in the wrong venue is akin to structural error, which defies harmless error analysis because it affects the framework in which the trial is held.

People v. Smollett, 2023 IL App (1st) 220322 Defendant, an actor accused of falsely reporting a hate crime, was charged with several counts of disorderly conduct. The Cook County State's Attorney nol-prossed all charges, prompting a retired appellate court justice to file a *pro se* petition to appoint a special prosecutor to investigate the case and the state's attorney's decision. Judge Toomin granted the order and a special prosecutor was appointed. In a new proceeding, defendant was convicted of five counts of disorderly conduct. Defendant appealed, challenging the appointment of the special prosecutor on several grounds.

The appellate court majority rejected the arguments because it lacked authority to review the appointment of the special prosecutor. Judge Toomin's order appointing a special prosecutor was issued in a previous proceeding with a different case number from the criminal prosecution at issue in the instant appeal. Defendant did not appeal Judge Toomin's order, despite the fact that under Rule 301, non-parties with direct interests in the subject matter have the right to appeal. Thus, the appellate court lacked jurisdiction to review the appointment of the special prosecutor.

Defendant further alleged the prosecution by the special prosecutor violated an agreement he had with the Cook County State's Attorney, who required him to forfeit his $10,000 bond in exchange for the nol-pros decision. However, the record did not establish this agreement included a promise not to prosecute in the future. A *nolle prosequi* is not a final disposition and does not bar future prosecutions for the same offense. Had defendant desired to reach a non-prosecution agreement, he was obligated to obtain more from the State than a nol-pros. See *e.g.* **People v. Smith**, 233 Ill. App. 3d 342 (1992) (upholding a non-prosecution agreement because the State had sought an "outright dismissal" in exchange for defendant's cooperation.)

Nor did the subsequent prosecution violate double jeopardy. The State nol-prossed his case 12 days after indicting him. No jury had been impaneled and no evidence had been submitted. Thus, jeopardy did not attach to the first criminal prosecution. A nol-pros is not a final judgment and therefore does not trigger the attachment of jeopardy.

A dissenting justice would have found the special prosecutor was bound to honor the *nolle* entered by the CCSAO because defendant provided as consideration a promise to perform 15 hours of community service and forfeit his $10,000 bond. The dissent pointed out that the special prosecutor conducted a full investigation of the CCSAO's handling of the case, and in that investigation it discovered that the CCSAO intended for the *nolle* to be a binding agreement tantamount to dismissal with prejudice.

People v. Brown, 2023 IL App (2d) 220334 At the second-stage, the circuit court orally granted the State's motion to dismiss defendant's post-conviction petition. Although the court promised a written order, defendant immediately appealed, and no written order was ever

entered. The appellate court affirmed. Defendant filed a successive petition, restating his original **Miller** claim. The circuit court denied leave to file.

On appeal from the successive petition, defendant argued that the case should be remanded because the circuit court failed to file a written order when it dismissed the initial petition. Although he did not raise this claim on appeal from that dismissal, he argued that the prior appeal was void where the circuit court failed to enter a final judgment by entering a written order. The appellate court rejected this argument.

Under Rule 272, if a judgment involves both an oral ruling and a written order, the judgment is final only upon the filing of the written order. Here, although the circuit court indicated it would file a written order, it never did so, meaning the oral ruling was the only judgment. Defendant pointed out that in cases such as **People v. King**, 2012 IL App (2d) 100801, an oral ruling was not considered a final judgment, but the appellate court distinguished **King** because that case involved *ex parte* first-stage summary dismissal followed by a written order. Here, the oral ruling was the only judgment, defendant was present for the ruling, and he filed a notice of appeal directly afterwards. The judgment was sufficiently final to confer jurisdiction upon the appellate court. Therefore the original appeal was not void, and any attack on that dismissal has been forfeited.

People v. Cole, 2023 IL App (1st) 220174 Defendant was convicted of first degree murder for his role in the death of Darryl Green, who was kidnaped for ransom in Illinois and subsequently killed in Indiana. The trial court sentenced defendant to 28 years of imprisonment. On direct appeal, defendant unsuccessfully challenged his sentence as excessive.

Subsequently, defendant filed a post-conviction petition alleging that his murder conviction was void for lack of jurisdiction because the killing occurred in Indiana, not Illinois. The trial court summarily dismissed defendant's petition, and the appellate court affirmed.

A person is subject to prosecution in Illinois for an offense which he commits, either in whole or in part, within the State. Under 720 ILCS 5/1-5, Illinois's criminal jurisdiction statute, an offense is committed partly within Illinois "if either the conduct which is an element of the offense, or the result which is such an element, occurs within the State." Defendant argued that where the decedent's body was found in Indiana, and the evidence was that he was actually killed in Indiana, the State was required, and failed, to prove beyond a reasonable doubt that both the intent to commit the offense and some criminal act in furtherance of that intent was committed in Illinois and thus failed to establish criminal jurisdiction.

The appellate court agreed with the State, however, that defendant had forfeited this claim by not raising it on direct appeal. The criminal jurisdiction statute is simply a grant of authority to the State defining who is lawfully "subject to prosecution" within the State. It is not actually a component of subject matter jurisdiction. Thus, the court rejected defendant's contention that he was not subject to forfeiture concerns because his conviction was void for lack of jurisdiction.

The court went on to note that dismissal of defendant's petition could have been affirmed on the merits, as well. Here, the evidence showed that defendant and his codefendants made multiple calls to the decedent's brother in an effort to negotiate a ransom. When they were unsuccessful, they called the brother and told him to "make arrangements" for his brother and that they would not be calling again. They then drove the decedent to Indiana and killed him. Defendant did not dispute that the intent to kill the decedent was formed in Illinois, and the act of forcing the decedent into a vehicle and driving toward

Indiana, while defendant and his codefendants were armed with weapons, was a criminal act in furtherance of that intent. Accordingly, prosecution in Illinois was proper.

People v. Cook, 2023 IL App (4th) 210621 Defendant pled guilty to felony murder, then filed a motion to reconsider sentence within 30 days. He did not file a notice of motion as required by 730 ILCS 5/5-4.5-50(d). After no action was taken on the motion for a year, a PD discovered the motion and refiled it, along with a motion to withdraw the plea. The motion alleged that his plea was coerced and that his sentence was excessive. The trial court denied the motion.

On appeal, defendant alleged that comments critical of plea counsel, made during his testimony on the motion to withdraw, entitled him to a **Krankel** remand. The State argued the appeal should be dismissed for lack of jurisdiction because the notice of appeal was filed more than a year after the original motion.

The appellate court first held that it had jurisdiction. Defendant filed a timely motion to reconsider. Although the motion was not accompanied by a notice of motion, this defect was not jurisdictional. Section 5-4.5-50(d) states that a motion must be filed within 30 days to be considered timely. It does not state that a lack of notice of filing renders it untimely; no consequences are attached to the notice requirement. While this holding contradicts several prior cases, they all involved an earlier version of the statute which specifically stated a motion was timely filed only if it included a notice of motion.

Defendant was not entitled to a **Krankel** remand, however. While defendant made some statements during his testimony that could be considered critical of his attorney – he pled because his case was not "moving forward"; counsel did not inform him about a pending favorable statute; no one "helped" him with his case – the statements were contradicted by the record, and regardless, none amounted to"clear claims asserting ineffective assistance of counsel" required by **People v. Ayres**, 2017 IL 120071.

People v. DeBates, 2021 IL App (2d) 200503 The trial court did not err in dismissing forgery charges against defendant on the basis of improper venue. The charges alleged that defendant filed a Congressional Candidate nominating petition containing fraudulent signatures of several Boone County residents. Defendant's motion to dismiss argued that there was no evidence that the signatures were forged in Boone County and that the delivery of the petition to the State Board of Elections in Sangamon County was the essence of the offense. The State's Attorney argued that the Boone County residents whose signatures were forged were victims of the offense and therefore venue was proper.

In affirming the dismissal, the Appellate Court noted that the charges against defendant were based on forgery by delivery, under 720 ILCS 5/17-3(a)(2), in that they alleged defendant "with the intent to defraud, knowingly delivered" false documents to the Board of Elections. The individuals whose signatures were forged were not victims as the offenses were charged, and the State may not designate someone as a victim merely to establish venue in a particular county.

People v. Velazquez, 2020 IL App (1st) 181958 The circuit court erred in dismissing defendant's FOIA complaint because he filed it in the criminal division instead of in the chancery division. Rather than dismissing, the circuit judge should have transferred it to the chief judge for reassignment. The Appellate Court vacated the dismissal order and remanded for further proceedings.

People v. Wilber, 2020 IL App (2d) 180024 Upon being found unfit, defendant filed an interlocutory appeal. While the appeal was pending, defendant was found restored to fitness. Trial court proceedings recommenced, defendant discharged counsel and proceeded *pro se*, and a bench trial was held, all while the unfitness appeal remained pending. Defendant was convicted of harassment through electronic communication and appealed that judgment.

The Appellate Court reviewed *de novo* whether the trial court had jurisdiction over the matter while the unfitness appeal had remained pending and concluded that it did not. The court rejected the State's revestment argument, holding that revestment only applies after a final order and the unfitness order was not such an order. Likewise, the doctrine of invited error did not operate to restore jurisdiction in the circuit court because the lack of subject matter jurisdiction in the circuit court could not be waived by the parties.

People v. Lake, 2020 IL App (1st) 170309 After defendant served his six-year prison term for sexual assault, DOC informed the circuit court that the two-year term of MSR it ordered was illegal, and that the applicable sentencing statute required a three-year term. The circuit court changed the sentencing order to reflect a three-year term of MSR. It stated that its order was *nunc pro tunc*.

The Appellate Court agreed with defendant that the circuit court lacked jurisdiction to change the order. *Nunc pro tunc* orders are limited to clerical errors, not substantive changes to the sentencing order. While the State argued that jurisdiction revested in the circuit court when the parties appeared before the judge after the order was entered, revestment would require active participation by the parties at the time the order was entered. Here, the court acted *sua sponte* and without notice. Because the court lacked jurisdiction, the change to MSR was void.

People v. Bochenek, 2020 IL App (2d) 170545 Identity theft statute providing that venue is proper either in the county: (1) where the offense occurred; (2) where information to commit the offense was used, or (3) where the victim resides, does not conflict with Illinois Constitution's guarantee that a defendant be tried in the county where the offense was alleged to have been committed. Identity theft is "committed" both where the physical act occurs and where the victim is injured. The Appellate Court relied on the plain language of both the venue statute and the identity theft statute to reach this conclusion. The court also noted that the constitutional venue provision had broadened over time, empowering the legislature to provide for venue where the offense was alleged to have occurred, even where the actual fact is that the physical act occurred elsewhere. Thus, defendant's prosecution for identity theft was proper in DuPage County, where the victim resided, even though the evidence showed that he used the victim's credit card in Lake County.

People v. McVay, 2019 IL App (3d) 150821 Although the murder victim's body was discovered in Minnesota, there was jurisdiction to prosecute defendant in Illinois for first degree murder and concealment of a homicidal death. Jurisdiction may be proved by circumstantial evidence. Here, the victim's cell phone was last used in Illinois, carpet fibers on the victim's body were consistent with those recovered from defendant's apartment in Illinois, defendant admitted the victim had been at his apartment before she went missing, defendant used the victim's ATM card at a gas station in Illinois, and marks on the body established that the victim had been moved sometime after her death.

People v. Higuera, 2019 IL App (3d) 180730 Defendant's bond was ordered forfeited in 2014 when he failed to appear for sentencing. Upon his arrest more than three years later, the

court vacated the forfeiture, and the State appealed that order. Despite the fact that the trial court still had jurisdiction over the criminal case because defendant had not yet been sentenced, the court was without jurisdiction over the bond forfeiture. A bond forfeiture is a civil judgment which constitutes a distinct final order. Thus, the trial court lost jurisdiction over the bond forfeiture after 30 days from its entry. The Appellate Court vacated the trial court's order vacating the bond forfeiture

People v. Choate, 2018 IL App (5th) 150087 Criminal jurisdiction is an essential element of the offense, and if the location of criminal conduct is unclear, a trial court should instruct jurors to find the crime was committed at least partly within the state. In this case, the evidence showed that the predatory criminal sexual assault occurred in multiple states. But the victim testified that the specific incident alleged in the indictment occurred in Illinois, a claim corroborated by other evidence. As such, the jury would have no reason to believe that the crime may have occurred in another jurisdiction, or convict defendant based solely on conduct occurring in another state. Accordingly, no instruction on geographic jurisdiction was required.

People v. Bell, 2018 IL App (4th) 151016 A **Krankel** motion does not negate a notice of appeal under Rule 606(b), and therefore the trial court's failure to dispose of the motion and require a new notice of appeal did not deprive the Appellate Court of jurisdiction. Reaching the merits of defendant's **Krankel** claim, the Appellate Court found that the motion triggered the need for a preliminary inquiry under **People v. Ayres**, 2017 IL 120071, by making an express assertion of counsel's ineffectiveness.

People v. Johnson, 2017 IL App (4th) 160853 The trial court denied defendant's motion to reconsider sentence on September 3, 2014. Defendant filed a notice of appeal on September 4. On September 26, the trial court notified the parties that it intended to reconsider it's denial of defendant's motion to reconsider sentence and set a hearing date for October 2. The court directed defendant's appellate counsel to withdraw his appeal. On September 29, the Appellate Court allowed defendant's motion to dismiss his appeal. On October 2, the trial court held a hearing and reduced defendant's sentence. On October 3, defendant filed a notice of appeal.

The State argued that defendant's September 4 notice of appeal deprived the trial court of jurisdiction to reconsider the denial of his motion to reconsider sentence. According to the State, the dismissal of defendant's appeal on September 29 did not return jurisdiction to the trial court since the Appellate Court did not specifically remand the case back.

The Appellate Court disagreed. A trial court generally loses jurisdiction 30 days after the entry of a final judgment. Here, when the Appellate Court dismissed defendant's appeal, jurisdiction returned to the trial court for the remainder of the 30-day period following the denial of defendant's motion to reduce sentence. The trial court thus had jurisdiction to reduce defendant's sentence within the 30-day period.

People v. Sandoval-Carrillo, 2016 IL App (2d) 140332 The State's failure to charge defendant with a felony by an indictment or information did not deprive the trial court of subject matter or personal jurisdiction. Here the prosecution was commenced when a police officer filed a complaint for preliminary hearing without any input from the prosecutor. Although Illinois law requires all felony prosecutions to be initiated by an information or indictment, the failure to do so did not affect the trial court's jurisdiction.

Subject matter jurisdiction is created by the Illinois Constitution which gives trial

courts subject-matter jurisdiction over all justiciable matters. (Ill. Const., 1970, art. VI, §9.) The complaint for preliminary hearing stated an actual offense and thus presented the trial court with a justiciable matter, which gave it subject matter jurisdiction.

The court also had personal jurisdiction. Although personal jurisdiction does not attach where the prosecutor neither initiated nor acquiesced in the prosecution by the time a final judgment has been entered, here the prosecutor, while not initiating the prosecution, had clearly acquiesced in it by amending the complaint and participating in the proceedings that resulted in defendant's guilty plea.

People v. Vari, 2016 IL App (3d) 140278 The Appellate Court's jurisdiction in civil cases is generally limited to appeals from final judgments. Ill. Const. 1970, art. VI, §6; Ill. S. Ct. R. 301. A final judgment is a determination by the court which disposes of all issues between the parties and terminates the litigation. The dismissal of a complaint without prejudice is not a final and appealable order.

Defendant filed an untimely *pro se* 2-1401 petition and served the State by standard United States mail. The State filed a special appearance and argued that the trial court did not have personal jurisdiction over the State because defendant failed to properly serve the State. The trial court granted the State's motion to dismiss on jurisdictional grounds. Defendant appealed.

The Appellate Court dismissed the appeal for lack of jurisdiction. The court held that defendant was not prejudiced by the dismissal and could have refiled immediately with proper service. Defendant's petition was already untimely when he filed it and there is no bar to filing successive 2-1401 petitions. A disposition on the merits of his petition could have been made much sooner if he had simply refiled than if the case had been heard on appeal and then reversed and remanded back to the trial court for further proceedings. Since the trial court's dismissal did not prejudice defendant, it was not a final appealable order.

People v. Shines, 2014 IL App (1st) 121070 More than 30 days after he had been sentenced, defendant filed a *pro se* letter titled "motion of appeal" in the trial court alleging that counsel had been ineffective. The trial court took no action on the letter. The Illinois Supreme Court granted defendant's motion for supervisory order directing the Appellate Court to allow defendant's letter "to stand as a validly filed notice of appeal."

Defendant argued on appeal that the trial court failed to conduct a **Krankel** hearing on defendant's *pro se* claims of ineffectiveness. The Appellate Court held that since defendant's letter was filed more than 30 days after the final judgment, the trial court no longer had jurisdiction to rule on defendant's claims.

A trial court generally loses jurisdiction 30 days after the entry of a final judgement. Here the court entered the final judgment on March 7 when it sentenced defendant and lost jurisdiction on Friday, April 6. Defendant filed his letter on Monday, April 9, more than 30 days after the final judgment had been entered.

The Appellate Court rejected defendant's argument that the letter was filed within 30 days under the mailbox rule. Under that rule, pleadings are timely filed on the day an incarcerated defendant places them in the prison mail system. Defendant argued that his letter was timely because it was filed on Monday, April 9, and thus with no Sunday mail, it could only be untimely if it had been placed in the prison mail system on Saturday, April 7 and then delivered halfway across the State by Monday, April 9, an impossible scenario.

The mailbox rule, however, does not permit such speculation. Instead, the rule requires a defendant to provide proof of mailing by filing a proof of service with "an affidavit stating the time and place of mailing, the address on the envelope, and the fact that proper

postage was prepaid." Since defendant did not file such an affidavit with his letter, he could not utilize the mailbox rule.

The court refused to take judicial notice of an affidavit submitted with defendant's motion for supervisory order. The affidavit, attached as an exhibit to defendant's reply brief, was from a paralegal who averred that a manager at the prison where defendant was incarcerated informed her that defendant's letter was mailed on April 3. The court held that it could not properly consider attachments to briefs that were not included in the record. Additionally, the content of the affidavit was entirely hearsay and thus insufficient to establish the date of mailing.

Defendant also argued that since the paralegal's affidavit was attached to the motion for a supervisory order, which was uncontested by the State and granted by the Supreme Court, the issue of when the letter was mailed had already been litigated and decided, and cannot be relitigated now. The supervisory order, however, did not reflect that the Supreme Court decided when the letter was mailed or whether it was timely filed in the trial court. The Supreme Court merely allowed the letter to serve as a validly filed notice of appeal.

Defendant's letter was therefore not timely filed and the trial court had no jurisdiction to consider his allegations of ineffective assistance of counsel.

People v. Villafuerte-Medrano, 2012 IL App (2d) 110773 An order is "void" if entered by a court which lacks jurisdiction or which exceeds its jurisdiction by entering an order beyond its inherent power. An order is void only where jurisdiction is lacking. By contrast, an order erroneously entered by a court which has jurisdiction is merely "voidable." Once jurisdiction is acquired, it is not lost because the court makes a mistake in determining the facts, the law, or both.

Where the court has subject matter and personal jurisdiction, it is not divested of jurisdiction because it accepts a guilty plea which violates double jeopardy. Thus, a conviction based on such a plea is voidable rather than void. To raise a double jeopardy challenge to such a plea, the defendant is required to file a timely motion to withdraw the plea. Otherwise, the entry of the guilty plea waives the double jeopardy challenge.

The court acknowledged that under federal constitutional law, a guilty plea does not waive a double jeopardy challenge where the double jeopardy violation can be established on the face of the charge. The court concluded that even in that case, however, the defendant must preserve the issue on appeal. In other words, a court may not review a double jeopardy claim that has not been preserved for appeal.

Here, the conviction based on defendant's guilty plea was voidable rather than void. Because defendant failed to file a timely motion to withdraw the plea, the court could not consider the claim that the conviction violated double jeopardy.

People v. Moreland, 292 Ill.App.3d 616, 686 N.E.2d 597 (1st Dist. 1997) Illinois lacked jurisdiction over sexual assault committed in Indiana (the victim's body was found in Illinois), despite the State's contention that the sexual assault was part of a common design to murder the victim to send a message to anyone who interfered with defendant's and his companion's drug business, even though Illinois had jurisdiction over murder, armed robbery, and kidnapping, where defendant was not charged with conspiracy and conspiracy could not be inferred from the evidence.

People v. Blanck, 263 Ill.App.3d 224, 635 N.E.2d 1356 (2d Dist. 1994) Illinois lacked jurisdiction over aggravated criminal sexual assault where the crime occurred in Wisconsin and defendant was arrested in Illinois because there was no evidence that any of the acts

comprising that offense occurred "either wholly or partly" in Illinois. Though force is an element of the offense and defendant continued the victim's confinement into Illinois (after he forced her into his car in Wisconsin), the force necessary for aggravated criminal sexual assault is force specifically used to accomplish sexual penetration; therefore, the fact that the complainant's confinement continued into Illinois after the acts of sexual penetration were completed did not confer jurisdiction.

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