FIRST DIVISION
DECEMBER 16, 2013

No. 1-11-0342

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 02 CR 19506
	)	
GEORGE MACLIN,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court, with opinion.
Presiding Justice Connors and Justice Hoffman concurred in the judgment and opinion.

OPINION

¶ 1 This appeal arises from a December 17, 2010 order entered by the circuit court of Cook County which dismissed defendant-appellant George Maclin's (Maclin) *pro se* postconviction petition as frivolous and patently without merit. Maclin's postconviction petition followed his conviction for first-degree murder, which was affirmed by this court in *People v. Maclin*, No. 1-07-3460 (2009) (unpublished order under Supreme Court Rule 23). On appeal, Maclin argues that: (1) the trial court improperly dismissed his postconviction petition because the court's order failed to address all of the claims presented in his petition; (2) the trial court erred in dismissing his postconviction petition because the petition stated an arguable basis of a claim that appellate counsel was ineffective for failing to argue that the trial court erred in refusing a jury instruction on the defense of necessity; and (3) the trial court improperly dismissed his postconviction petition because the petition stated an arguable basis of a claim that appellate counsel was ineffective for failing to argue that the trial court erred in refusing a jury instruction on self-defense to felony murder. For

the following reasons, we dismiss this appeal for lack of jurisdiction.

¶ 2 BACKGROUND

¶ 3 On July 3, 2002, Ernest McGhee (McGhee) suffered a stab wound to the neck. McGhee passed away as a result of his injury. On that same day, Maclin was arrested for the murder of McGhee. On July 30, 2002, Maclin was charged by indictment with five counts of first-degree murder and one count of armed robbery. The State proceeded to trial on only one count of felony murder predicated on armed robbery (720 ILCS 5/9-1(a)(3), 18-2(a)(1) (West 2002)).

¶ 4 On May 16, 2007, Maclin's jury trial commenced in the circuit court of Cook County. The jury returned a verdict finding Maclin guilty of first-degree murder. On June 19, 2007, Maclin filed a motion for new trial. The trial court denied Maclin's motion. On October 29, 2007, the trial court sentenced Maclin to a mandatory term of life imprisonment because Maclin had been previously convicted of first-degree murder.

¶ 5 On direct appeal, Maclin argued that: (1) he was not proven guilty of felony murder beyond a reasonable doubt; and (2) the trial court erred in refusing to admit evidence of McGhee's violent history pursuant to *People v. Lynch*, 104 Ill. 2d 194 (1984). See *People v. Maclin*, No. 1-07-3460 (2009) (unpublished order under Supreme Court Rule 23). This court affirmed the judgment of the trial court.

¶ 6 On September 21, 2010, Maclin filed a *pro se* postconviction petition. In his petition, Maclin presented several arguments that alleged that trial counsel and appellate counsel were ineffective. On December 17, 2010, the trial court entered a written order, which dismissed Maclin's petition as frivolous and patently without merit. Maclin now appeals from that order.

¶ 7 ANALYSIS

¶ 8 Before addressing the merits of Maclin's appeal, we must determine whether we have jurisdiction to consider his appeal. We note that neither party presents an argument on the jurisdiction issue. However, we are required to examine our jurisdiction *sua sponte*, and we must dismiss the appeal if we lack jurisdiction. *People v. Trimarco*, 364 Ill. App. 3d 549, 550 (2006). Illinois Supreme Court Rule 651 (eff. Feb. 6, 2013) governs appeals in postconviction proceedings and states that the procedure for postconviction appeals shall be in accordance with the rules governing criminal appeals. Illinois Supreme Court Rule 606 (eff. Feb. 6, 2013) states that appeals in criminal cases must be filed with the clerk of the trial court *within 30 days* after the entry of the final judgment.

¶ 9 In this case, the trial court dismissed Maclin's petition on December 17, 2010. On January 11, 2011, Maclin placed a notice of appeal in the mail at Pontiac Correctional Center. Attached to the notice of appeal was a certificate of service, which was notarized by a notary public. However, the notice of appeal was not received and filed in the circuit court until January 20, 2011, which was more than 30 days after Maclin's petition was dismissed and past the due date for filing an appeal. See Ill. S. Ct. Rs. 606, 651 (eff. Feb. 6, 2013). We note that this court has applied the mailbox rule to the filing of postconviction petitions. See *People v. Maiden*, 2013 IL App (2d) 120016; *People v. Hansen*, 2011 IL App (2d) 081226; *People v. Lugo*, 391 Ill. App. 3d 995 (2009). The mailbox rule states that when a notice of appeal is received after the due date, the time of mailing shall be deemed the time of filing. *Maiden*, 2013 IL App (2d) 120016, ¶ 9. Thus, under the mailbox rule, Maclin's notice of appeal would be considered to have been filed on January 11, 2011, the date on which he

placed the notice of appeal in the mail as long as the notice was properly addressed and mailed to the clerk. See *Childs v. Pinnacle Health Care, LLC*, 399 Ill. App. 3d 167 (2010). However, the applicability of the mailbox rule is not at issue in this case because Maclin did not properly mail his notice of appeal to the clerk of the circuit court. Even if this court were to apply the mailbox rule, Maclin's notice of appeal was not timely filed.

¶ 10 Supreme Court Rule 606 states that appeals must be filed with the *clerk of the circuit court*. Notably, Maclin addressed the certificate of service regarding his appeal to the *State's Attorney*, and not the clerk of the circuit court. If a notice of appeal is not mailed to the clerk, then it is not filed with the clerk. Thus, when Maclin placed his notice of appeal in the mail addressed to the State's Attorney, he was not in compliance with Rule 606 because the appeal was not addressed to the clerk of the circuit court. In this case, the State's Attorney happened to forward Maclin's notice of appeal to the clerk of the circuit court, albeit after the 30 days had run. The State's Attorney was not obligated to deliver Maclin's notice of appeal to the clerk, and her gratuitous act in doing so did not cure Maclin's tardiness. There is no support for the conclusion that the mailbox rule was intended to apply to a notice that is not addressed to the clerk of the circuit court, but is later serendipitously and gratuitously forwarded to the clerk. Indeed, another third party may not have extended Maclin the courtesy of forwarding his notice to the clerk. Under the unique facts of this case and the manner in which the notice was addressed, the only way the notice of appeal could have been considered timely is if it was filed with the clerk by January 18, 2011.[1] Clearly, that deadline was not met.

[1]The deadline extended to January 18, 2011 because January 17, 2011 was a holiday. See 5 ILCS 70/1.11 (West 2010); 5 ILCS 490/65 (West 2010).

Maclin further complicated his jurisdictional stance by failing to file a late notice of appeal within seven months of the dismissal of his postconviction petition pursuant to Rule 606(c). See Ill. S. Ct. R. 606(c) (eff. Feb. 6, 2013). While we understand that Maclin was acting *pro se* initially and that he may now be relying on the application of the mailbox rule in concluding that this court has jurisdiction, the plain interpretation of the rules makes it clear that we do not. We are powerless to confer jurisdiction where none exists, regardless of our understanding of and sympathy for Maclin's position. We note that while this court is unable to consider Maclin's appeal, the rules allow him to seek recourse in the Illinois Supreme Court. The supreme court has the power to exercise its supervisory authority to reinstate appeals in this court that we are otherwise unable to consider. See *People v. Lyles*, 217 Ill. 2d 210, 220 (2005). However, without a supervisory order from the Illinois Supreme Court, we are unable to consider Maclin's appeal. Accordingly, we must dismiss this appeal.

¶ 11 Appeal dismissed.