DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JAMES ANTHONY JACOBS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D20-3619

October 27, 2021

Appeal from the Circuit Court for Pasco County; Kimberly Campbell, Judge.

Howard L. Dimmig, II, Public Defender, and Pamela H. Izakowitz, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Michael S. Roscoe, Assistant Attorney General, Tampa, for Appellee.

ROTHSTEIN-YOUAKIM, Judge.

James Anthony Jacobs appeals the postconviction court's order denying his motion pursuant to Florida Rule of Criminal Procedure 3.800(a). Jacobs argues, among other things, that the court lacked jurisdiction to rescind its earlier order *granting* his

motion. Upon our independent jurisdictional review of the record, we agree and reverse.

Factual and Procedural Background

In 2002, Jacobs was charged in a felony information with three counts of burglary, first-degree felonies punishable by life in prison. He was sixteen years old at the time of the crimes. After pleading no contest, he was sentenced to concurrent terms of twenty-five years in prison on each count, followed by ten years of probation.

On February 28, 2020, Jacobs filed a rule 3.800(a) motion, arguing that under *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016), his sentence was unlawful under the Eighth Amendment and Florida law because he had not been provided a meaningful opportunity for early release based on maturation and rehabilitation. Jacobs contended that because he had been sentenced to more than twenty years in prison for nonhomicide offenses, he was entitled to an opportunity for early release at a judicial review hearing. By order rendered June 29, 2020, the postconviction court summarily denied Jacobs's motion.

Jacobs moved for rehearing on July 21, 2020,[1] arguing that even if he was not entitled to a de novo resentencing, he was still entitled to a sentence review hearing after twenty years pursuant to section 921.1402(2)(d), Florida Statutes. The postconviction court agreed and on August 12, 2020, granted rehearing and granted in part Jacobs's rule 3.800(a) motion. By the same order, the court directed the clerk of court to amend Jacobs's judgment and sentence to provide for sentence review after fifteen years. Two weeks later, on August 26, the court amended the order to correctly identify the sentencing provision applicable to Jacobs's offenses (from section 775.082(3)(b)2(b), Florida Statutes, to (3)(c)) and to direct that the sentence be amended to provide for review after twenty years rather than fifteen. According to the State, the clerk filed the amended judgment and sentence on September 1, 2020.

[1] Although the motion for rehearing appears untimely on its face, *see* Fla. R. Crim. P. 3.800(b)(1)(B) (providing that a party may file a motion for rehearing of an order under subdivision (a) "within 15 days of the date of service of the order"), Jacobs's public defender represented in the motion that he had not been served with the order denying relief until July 6, 2020. The State never challenged that representation; therefore, we must accept that the motion was timely.

On September 8, the State moved for rehearing of the August 26 order, arguing that the postconviction court should not have granted relief without the State first having an opportunity to respond and that Jacobs was not entitled to any sentence review.[2] The postconviction court granted the State's motion to the extent that on September 11, 2020, it entered a nonfinal order agreeing to review the State's argument in more detail.

In an abundance of caution, the State filed a notice of appeal of the amended judgment and sentence on September 15, 2020. On September 17, 2020, this court issued an order holding the appeal in abeyance because "[i]t appear[ed] that motion(s) [were] pending in the circuit court with the effect of delaying rendition pursuant to Florida Rule of Appellate Procedure 9.020(h)." *See* Fla. R. App. P. 9.020(h)(2)(C) ("[I]f a notice of appeal is filed before the

---

[2] The State's motion for rehearing was filed thirteen days after the filing of the amended order but twenty-seven days after the filing of the original order granting Jacobs rule 3.800 relief and, therefore, was likely untimely. *See Churchville v. Ocean Grove R.V. Sales, Inc.*, 876 So. 2d 649, 651 (Fla. 1st DCA 2004) ("An amendment or modification of an order or judgment in an immaterial, insubstantial way does not restart the clock to file an appeal."). Our ultimate holding, however, obviates the need to resolve that question definitively.

filing with the clerk of a signed, written order disposing of all such motions, the appeal shall be held in abeyance until the filing with the clerk of a signed, written order disposing of the last such motion.").

On September 18, however, the postconviction court, apparently unaware of this court's order, dismissed the State's motion for rehearing in the belief that it had lost jurisdiction to consider the motion when the State filed its notice of appeal. Upon learning of this court's order, however, the postconviction court interpreted the order as revesting jurisdiction in that court, and a few weeks later, it sua sponte rescinded its order dismissing the State's motion for rehearing and stated that it would consider the motion on the merits. Jacobs objected that the postconviction court no longer had jurisdiction. Unpersuaded, on November 24, 2020, the postconviction court vacated its August 26, 2020, order granting Jacobs relief and instead ordered that his rule 3.800(a) motion be denied.

Jacobs timely appealed. Thereafter, the State voluntarily dismissed its appeal of the amended judgment and sentence.

Analysis

Based on our review of the record, we are constrained to conclude that everything that happened in the postconviction court since September 18, 2020—the date on which the court dismissed the State's motion for rehearing—is a nullity, including the order currently on appeal. *Cf. Porter v. Chronister*, 295 So. 3d 310, 312 (Fla. 2d DCA 2020) (describing order entered after trial court lost jurisdiction as a "nullity"). With the court's disposition of the State's motion on that date, rendition of the amended judgment and sentence no longer was tolled (assuming that it was to begin with), the postconviction court was divested of jurisdiction by the State's earlier filing of the notice of appeal, and jurisdiction was vested solely in this court. *See* Fla. R. Crim. P. 3.800(b)(1)(B) ("A timely filed motion for rehearing [of any signed, written order entered under rule 3.800(a)] shall toll rendition of the order subject to appellate review and *the order shall be deemed rendered upon the filing of a signed, written order denying the motion for rehearing*." (emphasis added)); Fla. R. App. P. 9.020(h)(2)(C) ("[T]he appeal shall be held in abeyance until the filing with the clerk of a signed, written order disposing of the last such motion."); *see also Shepherd*

v. State, 912 So. 2d 1250, 1252 (Fla. 2d DCA 2005) ("Once a notice of appeal is filed, the trial court is divested of jurisdiction to amend the sentence . . . ." (citing *Dailey v. State*, 575 So. 2d 237 (Fla. 2d DCA 1991))).

Contrary to the postconviction court's understanding, this court's order holding the appeal in abeyance simply acknowledged that by operation of rule, the postconviction court may not yet have been divested of jurisdiction notwithstanding the filing of the notice of appeal. But our order in no way purported to *revest* the postconviction court with jurisdiction that it no longer had. Moreover, having lost jurisdiction upon the filing of its signed, written order dismissing the State's motion, the postconviction court could not "recapture" jurisdiction simply by sua sponte rescinding that order. *Cf. Porter*, 295 So. 3d at 312 (recognizing, in the civil context, that "[o]nce the trial court loses jurisdiction over a case, it may act again in the case only if a motion properly invoking its jurisdiction is timely filed").

Because the postconviction court lacked jurisdiction to enter the order on appeal, we reverse.[3] On remand, the postconviction court shall vacate its November 24, 2020, order and, accordingly, reinstate its August 26, 2020, order granting in part Jacobs's rule 3.800(a) motion and the September 1, 2020, amended judgment and sentence.

Reversed; remanded with instructions.

VILLANTI and LUCAS, JJ., Concur.

Opinion subject to revision prior to official publication.

---

[3] *See Spicer v. State*, 318 So. 3d 1269, 1271 n.1 (Fla. 2d DCA 2021) ("Usually where a court has no jurisdiction of the case the correct practice is to dismiss the suit, but a different rule necessarily prevails in an appellate court in cases where the subordinate court was without jurisdiction and has improperly given judgment for the plaintiff. In such a case the judgment in the court below must be reversed, else the plaintiff would have the benefit of a judgment rendered by a court which had no authority to hear and determine the matter in controversy." (quoting *Assessors v. Osbornes*, 76 U.S. 567, 575 (1869))).