

2013 IL App (1st) 120088-U

THIRD DIVISION
June 28, 2013
Modified Upon Denial of Rehearing July 24, 2013

No. 1-12-0088

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 10442
)	
NICO LEWIS,)	Honorable
)	Nicholas R. Ford,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Pierce and Mason concurred in the judgment.

ORDER

¶1 *Held:* Denial of defendant's motion to withdraw his guilty plea is affirmed where defendant's motion was untimely filed and the trial court properly admonished him regarding the filing requirements and his right to an attorney.

¶2 Pursuant to a fully negotiated guilty plea, defendant Nico Lewis was convicted of first degree murder and aggravated kidnaping and sentenced to consecutive terms of 36 years' and 10 years' imprisonment, respectively. Defendant filed a motion to withdraw his guilty plea more than 30 days later. The trial court ultimately determined that it lacked jurisdiction over defendant's motion and denied the motion without addressing its merits. On appeal, defendant concedes that his motion was

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untimely under Supreme Court Rule 604(d) (eff. July 1, 2006), but argues that the trial court's admonitions under Supreme Court Rule 605(c) (eff. Oct. 1, 2001) were defective and that we should invoke the "admonition exception" to Rule 604(d) and remand for proper admonishments. We affirm the trial court's denial of defendant's motion to withdraw his guilty plea.

¶ 3 On February 23, 2011, defendant pled guilty to one count of first degree murder and one count of aggravated kidnaping for the strangulation death of Tenika Hinton. After finding that the parties' stipulation to the factual basis for the plea was sufficient to prove defendant guilty beyond a reasonable doubt, the trial court sentenced defendant to 36 years' imprisonment for the first degree murder count and 10 years' imprisonment for the aggravated kidnaping count, to be served consecutively. After sentencing defendant, the trial court told defendant,

"It's important you understand, Nico, that although you pled guilty here today, you still enjoy an absolute right to appeal. In order to appeal you must first, within 30 days, file in this court a written motion to have the judgment vacated and for leave to withdraw your plea of guilt."

The trial court further told defendant that "[i]f [the motion to vacate judgment and leave to withdraw guilty plea] were denied, you'd have 30 days to appeal that denial. You'd have to give notice of that appeal to the Clerk of the Court. In that circumstance we'd get you a free attorney and a free transcript of today's plea." Defendant filed his motion to withdraw the guilty plea on May 2, 2011, more than 30 days after pleading guilty. Defendant claimed that he mailed the motion on April 12, 2011. Even accepting this earlier date, the motion was filed more than 30 days after the guilty plea, which was entered on February 23, 2011.

¶ 4 On appeal, defendant argues that this admonition regarding his right to an attorney did not substantially comply with Rule 605(c) where the judge never informed defendant that he had the right to assistance of counsel in preparing the motion to withdraw his plea and also in affirmatively stating that defendant would only be provided assistance of counsel in the event his motion to withdraw was denied and defendant sought to appeal that denial. Therefore, defendant argues, his untimely filing should be excused because had he been properly admonished regarding his right to an attorney's assistance in preparing his post-plea motion, then his motion would have been timely filed.

¶ 5 Although the parties' arguments focus on the admonition exception we believe a more fundamental question is the trial court's jurisdiction to consider this challenge to defendant's guilty plea. We find that the trial court properly ruled that it lacked jurisdiction over defendant's motion to withdraw his guilty plea because it was divested of subject matter jurisdiction after 30 days elapsed from the date that defendant was sentenced. See *People v. Flowers*, 208 Ill. 2d 291, 303 (2003). Because the circuit court had no jurisdiction to consider defendant's Rule 604(d) motion, the appellate court, in turn, has no authority to consider the merits of defendant's appeal. *Id.* at 307. Therefore, we affirm the trial court's denial of defendant's motion to withdraw his guilty plea. See *People v. Price*, 364 Ill. App. 3d 543, 546 (2006) (affirming the trial court's denial on jurisdictional grounds of an untimely filed motion to withdraw a guilty plea).

¶ 6 Even if this court were to consider the merits of defendant's claim, defendant's appeal fares no better. Generally, under Rule 604(d) no appeal can be brought from a guilty plea unless the defendant files a motion to withdraw the plea within 30 days. *People v. Dominguez*, 2012 IL 111336, ¶ 12. An exception to this requirement has been recognized where the trial court fails to properly admonish a defendant in compliance with Rule 605(c). See *People v. Dunn*, 342 Ill. App.

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3d 872, 877-78 (2003). Rule 605(c) does not require a verbatim reading of the rule and only substantial compliance is required. *Dominguez*, 2012 IL 111336, ¶ 22.

¶ 7 Here, after carefully considering the admonishments given, we find that the trial court substantially complied with Rule 605(c). The admonishments clearly advised defendant that he must file a motion within 30 days if he wished to withdraw his guilty plea, and defendant even acknowledged his understanding of this limitation by requesting that the trial court excuse his untimely filing. The admonition also conveyed that a court-appointed attorney would be available for defendant, and therefore conveyed the substance of Rule 605(c) to defendant. Accordingly, the trial court properly concluded that it lacked jurisdiction over defendant's motion to withdraw his guilty plea and properly "denied" it. See *In re J.T.*, 221 Ill. 2d 338, 347-48 (2006) (finding that the defendant received proper admonishments despite trial court stating the defendant would be appointed an attorney if the defendant appeals); and *People v. Dunn*, 342 Ill. App. 3d 872, 882 (2003) (finding that the trial court conveyed the substance of Rule 605(c) that an attorney would be available for the defendant even though the trial court's admonishments did not include the explicit language of the Rule).

¶ 8 We therefore affirm the judgment of the circuit court of Cook County.

¶ 9 Affirmed.