

FIFTH DIVISION
AUGUST 22, 2014

No. 1-13-0636

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
Plaintiff-Appellee,)	Circuit Court of
)	Cook County.
v.)	
)	No. 12 DV 40731
)	
MICHAEL FULGHAM,)	The Honorable
)	Terence MacCarthy,
Defendant-Appellant.)	Judge Presiding.
)	

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice Gordon and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* Pursuant to *People v. Dominguez*, 2012 IL 111336, ¶¶ 16-21, 43; *People v. Claudin*, 369 Ill. App. 3d 532, 533-35 (2006); *People v. Crump*, 344 Ill. App. 3d 558, 560-61 (2003); and *People v. Wyatt*, 305 Ill. App. 3d 291, 295-96 (1999), the circuit court's admonishments substantially complied with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001).

¶ 2 Pursuant to a negotiated guilty plea, defendant Michael Fulgham was found guilty of the misdemeanor offenses of endangering the life of a child and contributing to the neglect of a child, and was sentenced to two concurrent 300-day jail terms. A misdemeanor domestic battery charge was disposed of by means of *nolle prosequi* pursuant to the negotiated plea. Defendant failed to file a motion to withdraw the guilty plea and vacate the judgment, but he was allowed to file a late notice of appeal. On appeal, defendant contends that the cause must be remanded because the circuit court's admonishments concerning his post-plea rights did not substantially comply with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001).

¶ 3 The factual basis for the guilty plea disclosed that in a Maywood apartment on July 21, 2012, defendant left three children under three years old poorly supervised in a kitchen while a pot of boiling water was on the stove. The pot of boiling water fell onto his daughter while she was under his parental control and caused her first, second, and third degree burns over 30% of her body, which endangered her life and contributed to her neglect.

¶ 4 After accepting the guilty plea, the circuit court admonished defendant as follows:

"[THE COURT:] And sir, you do have a right to appeal what happened today. Before you could appeal, you must file within 30 days with the Clerk of the Circuit Court a written motion to withdraw your plea of guilty and vacate the judgment and the motion. You need to state all the reasons why you want to withdraw your plea of guilty.

If I grant the motion, I will set the guilty plea [sentence] down for judgment. If I deny your motion, you will have 30 days from the date of that denial to file a written notice of appeal.

Anything not raised in your motion to withdraw your plea of guilty or to vacate the judgment will be waived for appeal purposes.

If you are indigent a copy of the transcript as well as a free attorney would be appointed to assist you with the appellate rights.

Do you understand your appellate rights, sir?

THE DEFENDANT: Yes, sir."

¶ 5 On appeal, defendant contends that the circuit court did not properly admonish him of his post-plea rights and the applicable procedures pursuant to Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001), particularly that if he wished to withdraw the guilty plea and if he was indigent free counsel would be appointed to assist him with the preparation of *the post-plea motions* and free transcripts would be available during *the post-plea proceedings*, not only on appeal; that if a motion to withdraw were allowed the guilty plea and sentence would be vacated and *a trial date* (not judgment) would be set; and that if a motion to withdraw were allowed the charge that was dismissed pursuant to the plea agreement, namely, a misdemeanor domestic battery charge, would be reinstated and he would face all of the charges at a trial. He maintains that the erroneous implication of the circuit court's admonishments was that he was entitled to free counsel and transcripts only on appeal.

¶ 6 The State responds that the appeal must be dismissed because the circuit court's admonishments substantially complied with Supreme Court Rule 605(c) (eff. Oct. 1, 2001) in that they imparted the substance of the rule, and defendant failed to file the requisite motion to withdraw the guilty plea pursuant to Supreme Court Rule 604(d) (eff. Feb. 6, 2013).

¶ 7 We review *de novo* the circuit court's compliance with a supreme court rule. *People v. Dominguez*, 2012 IL 111336, ¶ 13; *People v. Gougisha*, 347 Ill. App. 3d 158, 162 (2004).

¶ 8 Supreme Court Rule 605(c) (eff. Oct. 1, 2001) sets forth the required admonishments for negotiated guilty pleas. *People v. Tlatenchi*, 391 Ill. App. 3d 705, 721 (2009). Rule 605(c) states in relevant part:

"In all cases in which a judgment is entered upon a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

(1) that the defendant has a right to appeal;

(2) that prior to taking an appeal the defendant must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;

(3) that if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made;

(4) that upon the request of the State any charges that may have been dismissed as a part of a plea agreement will be reinstated and will also be set for trial;

(5) that if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant and counsel will be appointed to assist the defendant with the preparation of the motions; and

(6) that in any appeal taken from the judgment on the plea of guilty any issue or claim of error not raised in the motion to vacate the judgment and to withdraw the plea of guilty shall be deemed waived."

¶ 9 The admonishments must substantially advise the defendant of his Rule 605(c) rights. See *Dominguez*, 2012 IL 111336, ¶¶ 16-21, 43. The admonishments need not be a verbatim recitation of the rule; rather, they need only convey the substance of the rule, or impart the essence of the rule. *Id.* at ¶¶ 11, 19, 22, 51. The supreme court stated:

"[T]he court must 'substantially' advise a defendant under Rule 605(c) in such a way that the defendant is properly informed, or put on notice, of what he must do in order to preserve his right to appeal his guilty plea or sentence. So long as the court's admonitions were sufficient to impart to a defendant the essence or

substance of the rule, the court has substantially complied with the rule." *Dominguez*, 2012 IL 111336, ¶ 22.

¶ 10 We conclude that the circuit court substantially complied with Rule 605(c) and provided the required admonishments. The circuit court admonished defendant of his right to appeal. The court explained that, before he could appeal, he needed to file a motion to withdraw the guilty plea and vacate the judgment within 30 days. The court instructed defendant to state all of the reasons why he wished to withdraw the guilty plea, and that anything not raised would be waived for purposes of appeal. The court further informed defendant that if it granted the motion, the matter would be set for "judgment," and that if it denied the motion, defendant would have 30 days to file a notice of appeal. The court admonished defendant that if he was indigent, he would get a copy of the transcript and a free attorney to assist him with "the appellate rights."

¶ 11 We believe that the admonishments conveyed the substance or imparted the essence of the rule and therefore substantially advised defendant of his Rule 605(c) rights. Although the court did not specifically state that the matter would be set for trial, that the dismissed domestic violence charge could be reinstated and set for trial, and that the free attorney could assist defendant with the preparation of the motions, case law establishes that defendant was substantially admonished pursuant to Rule 605(c). In *Dominguez*, the circuit court did not admonish the defendant that the matter would be set for trial, that any dismissed charges could be reinstated and set for trial on the State's request, and that the free attorney would assist him with the motions, and the supreme court upheld those admonishments. However, unlike the present case, the defendant in *Dominguez* signed a written form containing all of the Rule 605(c)

admonishments. In the present case, the defendant did not sign a supplementary written form containing the Rule 605(c) admonishments. See *Dominguez*, 2012 IL 111336, ¶¶ 27, 30. In *Dominguez* and in the present case the oral admonishments were similar and were all found to be in substantial compliance with Rule 605(c) in *Dominguez* except for the lack of a Rule 605(c)(4) admonishment, which the supreme court found was wholly cured in *Dominguez* by the supplementary written admonishment that is lacking in the present case.

¶ 12 In *People v. Claudin*, 369 Ill. App. 3d 532, 533 (2006), the circuit court failed to provide Rule 605(c)(3) and (4) admonishments, and the defendant consequently contended that the admonishments were insufficient because the circuit court failed to admonish him that if his motion were allowed, a trial date would be set and the State could reinstate 12 charges it had dismissed pursuant to the plea agreement. The *Claudin* court, relying on *People v. Crump*, 344 Ill. App. 3d 558, 560-61 (2003), held that the missing admonishments were harmless.

¶ 13 In *Crump*, 344 Ill. App. 3d 558, 560-61, the State disposed of seven charges by means of *nolle prosequi*, and the defendant was admonished that if his post-plea motion were successful, "all these charges would be reinstated, and you would be standing trial on them." The circuit court did not specifically admonish the defendant that charges disposed of by means of *nolle prosequi* could be reinstated, but, relying on *People v. Wyatt*, 305 Ill. App. 3d 291, 296 (1999), the appellate court held that the admonishments substantially complied with Rule 605(c). *Crump*, 344 Ill. App. 3d at 563.

¶ 14 In *Wyatt*, 305 Ill. App. 3d at 295-96, which involved similar language under Rule 605(b), the circuit court failed to issue a similar admonishment under Supreme Court Rule 605(b) about

reinstatement of charges disposed of by *nolle prosequi* if his motion were granted. The appellate court held that the defendant was substantially admonished in accordance with Rule 605(b) because there were no allegations "that any charges were reinstated to defendant's surprise." *Wyatt*, 305 Ill. App. 3d at 296. Similarly, in the present case, there were no allegations that the domestic violence charge was reinstated to defendant's surprise.

¶ 15 Under these circumstances, we conclude that defendant was substantially admonished in accordance with Rule 605(c). Therefore, the admonition exception did not excuse him from filing a motion to withdraw his plea and to vacate the judgment under Supreme Court Rule 604(d) (eff. July 1, 2006). *Claudin*, 369 Ill. App. 3d at 534. Before filing this appeal, defendant needed to file a motion to withdraw the plea and to vacate the judgment. Instead, defendant filed a notice of appeal, which was the wrong procedure to perfect his appeal from his negotiated plea. Accordingly, defendant has waived his right to a direct appeal. *Id.* at 535; *Crump*, 344 Ill. App. 3d at 563. We have considered, and rejected, all of defendant's arguments on appeal. Therefore, this appeal is dismissed.

¶ 16 Dismissed.