

2014 IL App (1st) 140295-U
No. 1-14-0295
December 30, 2014

SECOND DIVISION

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellee,)	
)	
v.)	Nos. 98 CR 11525
)	98 CR 11527
CHARLES DONELSON,)	
)	The Honorable
Defendant-Appellant.)	Lawrence Edward Flood,
)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

ORDER

¶ 1 *Held:* When a defendant who negotiated a guilty plea seeks to challenge his sentence, he must first file in the trial court a motion to reconsider the sentence.

¶ 2 In this appeal, Charles Donelson seeks to challenge the sentence the trial court imposed on him after he entered a negotiated guilty plea to a murder charge. Because Donelson did not file in the trial court a written motion for reconsideration of his sentence, we find that Supreme Court Rule 604 mandates dismissal of the appeal. Ill. Sup. Ct. R. 604(d) (eff. Dec.

11, 2014). We remand to the circuit court for admonitions in accord with Supreme Court Rule 605. Ill. Sup. Ct. R. 605(c) (eff. Oct. 1, 2001).

¶ 3

BACKGROUND

¶ 4

The State charged Donelson with first degree murder, home invasion, and aggravated criminal sexual assault. In 2003, Donelson pled guilty to the charges in exchange for concurrent sentences of 50, 30 and 30 years respectively on the three charges. *People v. Donelson*, 2013 IL 113603, ¶ 8. Donelson filed a pro se motion for relief pursuant to section 2-1401(f) of the Code of Civil Procedure. 735 ILCS 5/2-1401(f) (West 2008). The circuit court dismissed the motion. On appeal, Donelson challenged his sentences on grounds that section 5-8-4 of the Unified Code of Corrections required the sentences for murder and aggravated criminal sexual assault to run consecutively. 730 ILCS 5/5-8-4 (West 1998). The appellate court agreed with Donelson and vacated the sentences and remanded for the imposition of consecutive sentences to run for a total of 50 years. Our supreme court affirmed the appellate court's judgment. *Donelson*, 2013 IL 113603, ¶ 29.

¶ 5

On remand, the trial court imposed a sentence of 44 years for the murder, with a concurrent sentence of 30 years for home invasion, and 6 years for aggravated criminal sexual assault, to run consecutively to the murder sentence. The court also added a mandatory supervised release term of 3 years to life on the aggravated criminal sexual assault conviction. After the resentencing, the trial court advised Donelson,

"[Y]ou have the right to appeal. In order to appeal, you must within 30 days of today's date file with the court a notice of appeal. If you cannot afford an

attorney or the transcripts for the appeal, they will be provided for you, an attorney would be provided for you free of charge.

However, you must remember if you fail or forget to put something in your petition regarding what you seek to appeal, it could be waived for all time."

¶ 6 Donelson filed no motion to withdraw his guilty plea, and he filed no motion for reconsideration of his sentence. Instead, he filed a notice of appeal.

¶ 7 ANALYSIS

¶ 8 Donelson seeks to challenge the mandatory supervised release term the trial court imposed as part of his sentence. Donelson contends that rule 605 requires remand of the case to the trial court for proper admonitions.

¶ 9 Supreme Court Rule 604(d) provides:

"No appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment. No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment." Ill. Sup. Ct. R. 604(d) (eff. Dec. 11, 2014).

¶ 10 Our supreme court has held that "[c]ompliance with Rule 604(d) is a condition precedent to a defendant's appeal," and "[u]nder Rule 604(d), the appellate court must dismiss the

appeal of a defendant failing to file a written motion to withdraw his plea of guilty or to reconsider his sentence." *People v. Jamison*, 181 Ill. 2d 24, 28-29 (1998). The *Jamison* court added:

"[R]ules of this court concerning criminal defendants and pleas of guilty are not suggestions. [Citation.] When the language of a supreme court rule is plain and unambiguous, courts will not read in exceptions, limitations, or other conditions. *** This court requires strict compliance with Rule 604(d) by a defendant. [Citation.] A necessary antecedent, however, is that the defendant be given the admonitions prescribed by Rule 605(b) to advise him of those requirements. When the trial judge fails to provide the admonitions required by Rule 605(b) and the defendant fails to follow Rule 604(d), we believe it is appropriate to remand the cause to the trial court for proceedings consistent with Rule 605(b)." *Jamison*, 181 Ill. 2d at 29-30.

¶ 11 Here, rule 605(c) applies, rather than 605(b), because Donelson negotiated his guilty plea. The other concerns raised in *Jamison* apply here just as they applied to *Jamison*. Because Donelson did not file in the trial court a written motion for reconsideration of his sentence following the imposition of the sentence he now seeks to challenge, rule 604(d) requires us to dismiss the appeal. *Jamison*, 181 Ill. 2d at 28-29; Ill. Sup. Ct. R. 604(d) (eff. Dec. 11, 2014). However, the trial court failed to admonish Donelson 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," as required by rule 605(c). Ill. Sup. Ct. R. 605(c)(2) (eff. Oct. 1, 2001).

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Following the reasoning of *Jamison*, we hold that when the trial court fails to admonish a defendant in accord with rule 605(c), we must remand the cause to the trial court for the admonitions our supreme court rules require. See *People v. Foster*, 171 Ill. 2d 469, 474 (1996).

¶ 12 Remanded with directions.