

**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).

2014 IL App (4th) 120824-U  
NO. 4-12-0824

**FILED**  
January 22, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

In re: TROY H., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Adams County
v.	)	No. 12JD27
TROY H.,	)	
Respondent-Appellant.	)	Honorable
	)	John C. Wooleyhan,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Appleton and Justice Pope concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court failed to properly admonish respondent minor pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001) and the matter is remanded for compliance with that rule.

¶ 2 The State filed a petition for adjudication of wardship, alleging respondent, Troy H. (born March 8, 1995), was a delinquent minor. Respondent admitted the allegations against him and the trial court ordered him committed to the Department of Juvenile Justice for an indeterminate period. Respondent appeals, arguing (1) the court failed to properly admonish him pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001) and (2) he was prejudiced by the court's faulty admonishments. We remand with directions.

¶ 3 I. BACKGROUND

¶ 4 On March 29, 2012, the State filed a petition for adjudication of wardship,

alleging respondent was a delinquent minor, in that he committed the offense of aggravated assault (720 ILCS 5/12-2(c)(1) (West 2010)). Specifically, the State asserted respondent "pulled a knife on C.D. and stated he was going to stab him, thereby placing C.D. in reasonable apprehension of receiving a battery."

¶ 5 On April 23, 2012, the trial court conducted a hearing in the matter and respondent pleaded guilty to the alleged offense. Upon questioning by the court, respondent asserted he understood the allegations in the petition, he was admitting the allegations against him by his own choice, and he understood he was giving up his right to a trial or hearing. Following its questioning, the court determined respondent's plea was knowingly and voluntarily made. The State then provided its factual basis for the charged offense, which the court accepted. On appeal, the parties agree the court did not admonish respondent regarding the maximum penalty he faced as a consequence of his plea.

¶ 6 On July 3, 2012, the trial court conducted respondent's sentencing hearing and ordered him committed to the Illinois Department of Juvenile Justice for an indeterminate period. It then provided the following admonishments:

"I need to tell you today, [respondent], that, if you want to appeal from this order, what you need to do is sometime during the next 30 days you have to file a written paper with the Circuit Clerk asking that you be allowed to take back the admissions that you've made earlier in this case. That's how you get your appeal process started.

If you decide to do that, you would have a right to have an

attorney represent you on that appeal, either one you would get yourself or one the court would appoint for you, and you also would have a right to receive a written transcript of everything that's been said in court today."

¶ 7 On July 24, 2012, respondent filed a motion to reconsider his sentence. The same date, his attorney filed a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006), certifying that she had consulted in person with respondent "to ascertain his contentions of error in the sentence," examined the court file and report of proceedings of the plea and sentencing hearings, and "made any amendments to the minor's Motion to Reconsider Sentence for adequate presentation of any defects in that proceeding." On August 27, 2012, the trial court denied respondent's motion to reconsider.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, respondent argues the trial court failed to comply with the requirements of Rule 605(b) (eff. Oct. 1, 2001) when it neglected to inform him that any issue not included in a postsentencing motion would be forfeited on appeal. Further, he contends he was prejudiced by the court's faulty admonishments because he has a meritorious argument that he should be allowed to withdraw his guilty plea. Specifically, respondent contends he should be allowed to withdraw his guilty plea because plea proceedings did not comply with due process, in that he was not informed of his right to confront witnesses against him, his right against self-incrimination, or the maximum penalty he faced upon the court's acceptance of his plea. He asks that the cause be remanded for new admonishments pursuant to Rule 605(b) and the opportunity

to withdraw his guilty plea.

¶ 11 Pursuant to Rule 604(d) (eff. July 1, 2006), "[n]o 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 \*\*\* 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." "Rule 605(b) and Rule 605(c), which complement Rule 604(d) and serve as a corollary to the requirements of Rule 604(d), provide the admonitions the trial judge must give a defendant when imposing sentence on a defendant who has pled guilty." *People v. Dominguez*, 2012 IL 111336, ¶ 13, 976 N.E.2d 983.

¶ 12 Rule 605(b) (eff. Oct. 1, 2001) provides as follows:

"In all cases in which a judgment is entered upon a plea of guilty, other than 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 trial court reconsider the sentence or 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 sentence will be modified or 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 reconsider the sentence or to vacate the judgment and to withdraw the plea of guilty shall be deemed waived."

(Emphasis added.)

given." (Emphasis in original.) *Dominguez*, 2012 IL 111336, ¶ 21, 976 N.E.2d 983. However, the rule "need not be read nearly verbatim." *Dominguez*, 2012 IL 111336, ¶ 22, 976 N.E.2d 983. "Rather, \*\*\* the court must 'substantially' advise a defendant under Rule 605[(b) or] (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." *Dominguez*, 2012 IL 111336, ¶ 22, 976 N.E.2d 983. "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, 976 N.E.2d 983; see also *People v. Harper*, 315 Ill. App. 3d 760, 764, 734 N.E.2d 1033, 1038 (2000) (holding that although "[a] court need not use the exact language of Rule 605(b)," its "admonitions cannot leave out or misrepresent any of the rule's substance.").

¶ 14 "The lack of proper admonishment requires a remand for the purpose of receiving new admonishments strictly complying with Rule 605 and the filing of new postsentencing motions under Rule 604(d)." *People v. Young*, 387 Ill. App. 3d 1126, 1129, 903 N.E.2d 434, 437 (2009). "A trial court's compliance with the admonition requirements of Supreme Court Rule 605 is reviewed *de novo*." *Young*, 387 Ill. App. 3d at 1127, 903 N.E.2d at 435.

¶ 15 Here, following respondent's sentencing, the trial court admonished him that, if he wanted to appeal, he needed "to file a written paper" sometime in "the next 30 days" and ask that he "be allowed to take back the admissions" he made earlier in the case. The court further informed respondent that he had the right to be represented by an attorney of his own choosing or have an attorney appointed by the court. It also informed respondent that he had the "right to receive a written transcript of everything that's been said in court today." We find these admonishments were insufficient to impart the substance of the Rule 605(b) and, thus, the court

failed to substantially comply with the rule.

¶ 16 The record shows the trial court failed to provide any admonishments in connection with paragraphs (b)(3), (b)(4), or (b)(6) of Rule 605. Although it does not appear that paragraph (b)(4) is relevant to respondent in that it involved the reinstatement of previously dismissed charges, paragraphs (b)(3), involving the effect of a successful postsentencing motion, and (b)(6), stating any claim of error not raised in a postsentencing motion would be deemed waived, contained both relevant and necessary information. Additionally, the court only partially complied with paragraph (b)(2) in that, although it admonished respondent that he needed to file a motion to "take back [his] admissions" within 30 days, it did not inform him of the need to file a motion to reconsider his sentence to preserve sentencing issues or that he must set forth the grounds for any motion filed. Finally, the court failed to advise defendant pursuant to (b)(5) that a transcript of his guilty plea proceedings could be provided to him without cost, stating only that he had a right to receive a written transcript of everything that was said in court on the date of his sentencing.

¶ 17 On appeal, the State argues the trial court substantially complied with Rule 605(b) and cites *People v. Crump*, 344 Ill. App. 3d 558, 801 N.E.2d 1 (2003), to support its position. In that case, "the trial court failed to inform [the] defendant that any allegation of error not raised in his [postsentencing] motion would be waived on appeal or that any nol-prossed charges could be reinstated if his motion to vacate judgment and withdraw his plea was granted[.]" *Crump*, 344 Ill. App. 3d at 563, 801 N.E.2d at 5. Nevertheless, the First District held that the "defendant was substantially advised of his appeal rights following his guilty plea and \*\*\* not prejudiced by the missing verbiage." *Crump*, 344 Ill. App. 3d at 563, 801 N.E.2d at 5.

¶ 18 We find *Crump* distinguishable. Specifically, in the case at bar, the trial court's admonishments were deficient in ways not present in *Crump*. As discussed, not only did the court in this case fail to inform respondent that issues not raised in a postsentencing motion would be deemed waived, it also failed to properly admonish him regarding the types of motions he needed to file, the effect of a successful motion, or that he was entitled to a transcript of more than just sentencing proceedings. We find the case at bar is actually more similar to *People v. Perper*, 359 Ill. App. 3d 863, 866, 834 N.E.2d 1008, 1009 (2005), where the Second District determined the trial court's Rule 605(b) admonishments were insufficient. In that case, the trial court failed to admonish the defendant (1) of the consequences of a prevailing postsentencing motion, (2) that he had the right to a free report of his guilty plea and sentencing proceedings, or (3) that any issue not raised in a postsentencing motion would be waived on appeal. *Perper*, 359 Ill. App. 3d at 866, 834 N.E.2d at 1009.

¶ 19 Finally, the State also argues that, because respondent was advised of the necessity of filing a motion to "take back" his admission and, "in consultation with his attorney, elected not to file a motion to withdraw his guilty plea and vacate judgment," he was not prejudiced by the trial court's faulty admonishments. First, a defendant is not required to establish prejudice when seeking remand based on faulty admonishments pursuant to Rules 605(b) and (c). "[I]n contrast to Rule 605(b) or (c) situations, failure to give the proper admonishments under Rule 605(a) will only result in remand \*\*\* 'where there has been prejudice or a denial of real justice as a result of the inadequate admonishment.'" *Dominguez*, 2012 IL 111336, ¶ 21 n.4, 976 N.E.2d 983 (quoting *People v. Henderson*, 217 Ill. 2d 449, 466, 841 N.E.2d 872, 881 (2005)).

¶ 20 Second, although the State contends respondent elected not to file a motion to withdraw his plea and vacate judgment after consulting with his attorney, the record fails to show respondent's attorney consulted with him regarding any contentions of error in the guilty plea proceedings. Specifically, his attorney filed a certificate pursuant to Rule 604(d), certifying that, while she examined the court file and reports of both the plea and sentencing proceedings, she only consulted with respondent "to ascertain his contentions of error in the sentence."

¶ 21 Additionally, although not raised by the parties, we note Rule 604(d) (eff. July 1, 2006) requires that a defendant's attorney file a certificate stating the attorney consulted with the defendant "to ascertain [the] defendant's contentions of error in the sentence or the entry of the plea of guilty[.]" This court has previously found noncompliance with the requirements of that rule where counsel's 604(d) certificate stated defense counsel ascertained the defendant's contention of "error and sentence" and we could not be sure "whether counsel ascertained defendant's contentions of error in the guilty plea hearing as well as in the sentence." *People v. Prather*, 379 Ill. App. 3d 763, 768, 887 N.E.2d 44, 47 (2008). See also *People v. Jordan*, 2013 IL App (2d) 120106, ¶ 16, 992 N.E.2d 585 ("[W]here [the] defendant could file both a motion to reconsider the sentence *and* a motion to withdraw his plea in order to preserve all of his appeal rights, but he filed only a motion to reconsider the sentence, we cannot know that the decision not to move also to withdraw the plea was defendant's decision based on proper advice and 'consultation' with counsel unless counsel's Rule 604(d) certificate contains language referring to consultation about the plea." (Emphasis in original.)).

¶ 22 Here, the trial court failed to comply with the requirements of Rule 605(b) as it only partially admonished respondent with respect to the substance of that rule. The case law

presented by the State is distinguishable and the record does not support its contention that respondent elected not to file a motion to withdraw his plea after consulting with his attorney. Remand for proper Rule 605(b) admonishments is warranted.

¶ 23

### III. CONCLUSION

¶ 24 For the reasons stated, we remand this case with directions that the trial court properly admonish respondent pursuant to Supreme Court Rule 605(b) and to allow him the opportunity to file a motion to withdraw his guilty plea if he so chooses and for the filing of a proper Rule 604(d) certificate.

¶ 25

Remanded with directions.