

No. 1-14-1827

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. 13 CR 18234
)	
TYANNE ELLIS,)	Honorable
)	Lawrence Edward Flood,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

O R D E R

¶ 1 *Held:* We dismissed defendant's appeal where, after her negotiated guilty plea, she did not file a motion to vacate her plea under Supreme Court Rule 604(d), and the circuit court's admonishment substantially complied with Supreme Court Rule 605(c).

¶ 2 Defendant Tyanne Ellis entered a negotiated plea of guilty to robbery and was sentenced to probation and ordered to pay restitution. On appeal, defendant argues that her failure to file a postplea motion pursuant to Illinois Supreme Court Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013)), was excused because the circuit court failed to provide sufficient admonishments pursuant to Illinois Supreme Court Rule 605(c) (Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001)).

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Defendant asks that we remand the case for the circuit court to provide proper admonishments and her compliance with Rule 604(d). We dismiss the appeal.

¶ 3 Defendant was charged by indictment with one count of robbery, two counts of intimidation, and one count of unlawful restraint. On May 7, 2014, defendant, through her court-appointed counsel, requested a conference with the circuit court pursuant to Illinois Supreme Court Rule 402 (Ill. S. Ct. R. 402 (eff. July 1, 2012)). After the conference, defendant pled guilty to robbery in exchange for a negotiated sentence of three years' probation and an order to pay restitution in the amount of \$200.

¶ 4 After the court admonished defendant as to whether she was willing to enter the plea, the State presented the following factual basis for the plea. On April 5, 2013, defendant pulled Marielena Severiano by her jacket, took Ms. Severiano's cell phone from her front pocket, and forced her into a vehicle which was driven by an unknown male. Defendant threatened to hurt Ms. Severiano's family if she did not direct them to her residence and retrieve some money. They travelled to the 2600 block of South Trumbull Avenue in Chicago where defendant instructed Ms. Severiano to get the money. Ms. Severiano exited the vehicle and used the cell phone of a passer-by to call the police.

¶ 5 The court accepted defendant's plea, entered a judgment of guilty on the robbery charge, and imposed the agreed-upon sentence of probation and restitution. The State *nolle prossed* the remaining counts.

¶ 6 After imposing the negotiated sentence, the circuit court admonished defendant as follows:

"I want you to understand that even though you have plead guilty to this charge you still have the right to appeal. In order to appeal you must within 30 days of today's date file with this Court a written motion asking this Court to either reconsider the sentence being entered here today or ask leave to withdraw your plea of guilty.

If that motion were to be granted the plea of guilty, sentence, and judgment would be vacated and a trial date would be set not only on this case but any other matters that the State may seek to reinstate against you that are being dismissed as a result of this proceeding.

If you cannot afford an attorney for appeal one would be provided for you, as well as copies of the transcript which resulted in your plea of guilty and sentence.

However, you must understand if you fail or forget to put something in your petition for the Court to reconsider in its sentence or in vacating your plea it's waived or given up for all time. Do you understand your rights on appeal?"

Defendant responded: "Yes, your honor."

¶ 7 Defendant did not file a motion to withdraw her guilty plea and vacate the judgment. On June 2, 2014, defendant filed a timely notice of appeal.

¶ 8 On appeal, defendant contends that the circuit court, in its admonishment, failed to strictly comply with Illinois Supreme Court Rule 605(c) (Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001)). Defendant asks that we remand the case for the issuance of proper admonitions and an opportunity for her to comply with Illinois Supreme Court Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013)).

¶ 9 A defendant who wishes to appeal from a judgment entered on a negotiated guilty plea must follow the procedure set forth in Rule 604(d), which provides, in relevant part:

"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 [circuit] 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." Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013).

¶ 10 Our supreme court has held that, when a defendant enters into a negotiated plea, under Rule 604(d) she must file a motion to withdraw the plea and vacate the judgment in order to preserve an appeal. *People v. Evans*, 174 Ill.2d 320, 332 (1996)). If a defendant fails to meet the requirements of Rule 604(d), the appeal must be dismissed. *People ex rel. Alvarez v. Skyrd*, 241 Ill. 2d 34, 40 (2011). However, if a defendant appeals without first complying with Rule 604(d) and the circuit court failed to give the proper admonishments set forth in Rule 605, the appeal is not dismissed but remanded to the circuit court to provide proper admonishments and for the defendant to comply with Rule 604(d). *People v. Flowers*, 208 Ill. 2d 291, 301 (2004).

¶ 11 Here, defendant entered a negotiated guilty plea and, thus, the circuit court was required to admonish defendant in accordance with Rule 605(c), which provides, in relevant part, as follows:

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

* * *

(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." Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001).

¶ 12 The circuit court is not required to use the exact language of Rule 605(c). *People v. Dominguez*, 2012 IL 111336, ¶ 11. In order to comply with Rule 605(c), the circuit court must "substantially" advise defendant in such a way that she is put on notice of what she must do in order to preserve her right to appeal her guilty plea or sentence and her right to court appointed counsel if she is indigent. Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001); *Dominguez*, 2012 IL 111336, ¶ 22, 45. So long as the court's admonition imparts the essence or substance of Rule 605(c), the court has substantially complied with the rule. *Dominguez*, 2012 IL 111336, ¶ 22; *In re J.T.*, 221 Ill. 2d 338, 348 (2006). We review *de novo* the circuit court's compliance with supreme court rules. *Id.* ¶ 13.

¶ 13 Defendant first argues that the circuit court failed to comply with Rule 605(c)(2) by incorrectly advising her that to preserve her right to appeal from her negotiated plea she should file either a motion to reconsider her sentence or a motion to withdraw her plea within 30 days of the plea. Second, defendant contends that the circuit court failed to comply with Rule 605(c)(5) by not informing her of the right to court appointed counsel for the preparation of a postplea motion.

¶ 14 We find *Dominguez* instructive. In *Dominguez*, the circuit court admonished a defendant of his "right to return to the courtroom within 30 days to file motions to vacate [his] plea of

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guilty and/or reconsider [his] sentence." *Dominguez*, 2012 IL 111336, ¶ 5. The court further advised: "In the event the motions are denied, you have 30 days from denial to return to file a notice of appeal the Court's ruling. If you wish to do so and could not afford an attorney, we will give you an attorney free of charge, along with the transcripts necessary for those purposes." *Id.* Additionally, the court provided the defendant with a waiver form containing written admonitions that used language "almost verbatim" to the actual language of Rule 605(c).

Id. ¶¶ 5-6.

¶ 15 On appeal, our supreme court rejected the defendant's arguments that the circuit court's admonitions misinformed him that he must "return to the courtroom" to file his postplea motions and that the admonitions implied that appointed counsel was available only after the conclusion of his postplea proceedings. *Id.* ¶¶ 42, 47. The court explained that "[s]imply because the circuit court used the phrase 'return to the courtroom' does not indicate [that the] defendant was not substantially put on notice of what he must do within 30 days to withdraw his guilty plea."

Id. ¶ 43. The court also reasoned that, although the circuit court "arguably did not explicitly inform [the] defendant that he was entitled to have an attorney appointed to help him prepare the postplea motions ***, the admonitions reflect that a court-appointed attorney would be available for" him. *Id.* ¶ 51. Therefore, the court held that the circuit court's admonitions were sufficient to apprise the defendant of the substance of Rule 605(c)(2), (5). *Id.* ¶¶ 43, 51.

¶ 16 We find the circuit court substantially provided the admonishments required by Rule 605(c)(2). The court did not use the exact language of the rule but informed defendant that she had a right to an appeal but must first file a motion in the circuit court. In compliance with Rule

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605(c)(2), the court explained the motion requirement as a distinct and required step in the appeal process.

¶ 17 The circuit court's admonishments here inaccurately asserted that defendant could preserve her right to appeal by filing either a motion to reconsider sentence or a motion to vacate her plea. Like the admonitions in *Dominguez*, however, we believe the admonitions were sufficient to put defendant on notice that the filing of a postplea motion within 30 days was required if she wished to pursue an appeal and she failed to do so. *Id.* ¶ 49 (quoting *In re J.T.*, 221 Ill. 2d 338, 347-48 (2006)).

¶ 18 As to Rule 605(c)(5), the circuit court, in this case, stated: "If you cannot afford an attorney for appeal one would be provided for you, as well as copies of the transcript which resulted in your plea of guilty and sentence." Defendant contends the admonishment was inadequate for failing to inform her that an attorney could be appointed for postplea proceedings.

¶ 19 As discussed, our supreme court in *Dominguez* rejected a similar argument where the circuit court admonished the defendant that "if you go up on appeal and you are unable to hire an attorney to represent you, the [c]ourt will appoint an attorney for you free of charge." *Id.* ¶ 48. Our supreme court found that the admonition "reflected that a court-appointed attorney would be available for defendant" and thus the circuit court conveyed the substance of the rule.

Id. ¶ 51. We reach the same conclusion that the circuit court here conveyed the substance of rule 605(c)(5).

¶ 20 Defendant argues that *Dominguez* is distinguishable because the defendant in that case was also given written admonishments that used language "almost verbatim" to the language of Rule 605(c). However, the written admonishments in *Dominguez* were not dispositive of the

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supreme court's holding that the circuit court had substantially complied with Rule 605(c)(5). In finding the admonishments sufficient, the court in *Dominguez* relied on *In re J.T.*, and *People v. Dunn*, 342 Ill. App. 3d 872 (2003), neither of which involved written admonishments. Our supreme court noted that in those cases, the circuit court also "arguably did not inform defendant that he was entitled to have an attorney appointed to help him prepare the [postplea] motions" but, despite the imperfection of the oral admonishments, they were sufficient to convey the substance of the rule to defendant and thus complied with Rule 605. *Dominguez*, 2012 IL 111336, ¶ 51. Again, we reach the same conclusion here. The circuit court fulfilled its duty to substantially inform defendant that, if she was indigent, an attorney would be appointed to represent her as outlined by Rule 605(c)(5).

¶ 21 In conclusion, we find the circuit court's admonishments substantially advised defendant in accordance with Rule 605(c) so as to put her on notice of the requirements necessary to preserve an appeal after her negotiated plea of guilty and her right to an attorney. Because defendant failed to submit a motion to withdraw her plea and vacate the judgment before filing her notice of appeal, we must dismiss this appeal.

¶ 22 Dismissed.