

No. 1-14-3837

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. 14 C660134
)	
BRYCE COLE,)	Honorable
)	Brian K. Flaherty,
Defendant-Appellant.)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

O R D E R

¶ 1 *Held:* Appeal dismissed where the trial court substantially advised defendant of his appeal rights in accordance with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001) and, thus, defendant's failure to file a postplea motion was not excused by the admonition exception, resulting in defendant's waiver of his right to direct appeal.

¶ 2 Following a negotiated guilty plea, defendant Bryce Cole was convicted of aggravated driving under the influence of alcohol, felony driving while his driving privileges were revoked or suspended, and misdemeanor driving under the influence of alcohol. He was sentenced to

three concurrent terms of two years' probation. On appeal, defendant contends that the trial court failed to properly admonish him in accordance with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001), and therefore we must remand his case for proper admonishments. We dismiss.

¶ 3 Defendant was arrested on January 15, 2014, and subsequently charged by information with two counts of aggravated driving under the influence of alcohol and one count of felony driving while his driver's license, permit, or privilege to operate a motor vehicle was suspended or revoked. On October 15, 2014, defendant entered into a negotiated plea of guilty to aggravated driving under the influence of alcohol, felony driving while his driving privileges were revoked or suspended, and misdemeanor driving under the influence of alcohol in exchange for three concurrent terms of two years' probation.

¶ 4 At the plea hearing, the court admonished defendant of the possible penalties for each offense. The court also admonished defendant that in order to plead guilty he must give up his right to a jury and bench trial. Defendant acknowledged understanding those rights and waived them freely and voluntarily. The parties then stipulated to the factual basis for defendant's plea. The court found defendant understood the nature of the charges against him, the possible penalties for each offense, that there was a sufficient factual basis for the plea and that defendant was freely and voluntarily pleading guilty. Defendant waived his right to a presentence report and the court sentenced him to two years' probation for each offense to be served concurrently. After doing so, the court admonished defendant as follows:

"THE COURT: * * *

Sir, even though you pled guilty, you have a right to an appeal. In order to appeal you must within 30 days file with the court a written motion asking the court to allow you to withdraw your plea of guilty or ask this court to reconsider the sentence. If you can't

afford an attorney at that time because you are poor, one will be provided for you free of charge, as well as a transcript of today's proceeding.

But please understand if you fail or forget to put in your petition the reasons why you want this court to reconsider sentence or why you want this court to allow you to withdraw your plea of guilty, if you don't put those reasons in your motion, they will be waived or given up for all times. Do you understand?

[THE DEFENDANT]: Yes, sir."

¶ 5 Defendant entered his guilty plea on October 15, 2014, and failed to file any postplea motion in the trial court. On November 14, 2014, defendant filed a notice of appeal.

¶ 6 On appeal, defendant contends that the trial court failed to properly admonish him in accordance with Rule 605(c), and thus, his case should be remanded to the trial court for proper admonishments and to allow him an opportunity to file a motion to withdraw his guilty plea. Defendant acknowledges that he failed to file a postplea motion and would ordinarily be precluded from submitting an appeal, but argues that we should consider his claim under the admonition exception to that rule. In setting forth this argument, defendant asserts that, in admonishing him, the trial court conflated the need to file a postplea motion with the need to file a notice of appeal, and thereby implied that he only needed to file a single document to appeal from a negotiated guilty plea.

¶ 7 The State responds that the trial court's admonishments substantially complied with the requirements of Rule 605(c). As a result, the State argues that this court must dismiss the appeal because defendant waived his appeal rights when he failed to file a postplea motion pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013).

¶ 8 Rule 604(d) provides that when a defendant wishes to appeal from a judgment entered on a negotiated guilty plea he must first file a written motion with the trial court to withdraw the guilty plea and vacate the judgment. *People v. Dunn*, 342 Ill. App. 3d 872, 876 (2003); Ill. S. Ct. R. 604(d) (eff. Feb. 6, 2013). Compliance with Rule 604(d) is a condition precedent to an appeal, and generally, if a defendant fails to meet this requirement, we must dismiss the appeal. *People v. Jamison*, 181 Ill. 2d 24, 28-9 (1998); *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). However, under the admonition exception to this rule, if the trial court fails to admonish defendant in accordance with Rule 605 and defendant subsequently attempts to appeal without first filing the motions required by Rule 604(d), the appeal is not dismissed. *In re William M.*, 206 Ill. 2d 595, 605 (2003); *People v. Foster*, 171 Ill. 2d 469, 473 (1996). Rather, the appropriate course is to remand the case to the trial court for strict compliance with Rule 604(d). *Flowers*, 208 Ill. 2d at 301.

¶ 9 Here, defendant failed to file any postplea motion in the trial court and instead filed his notice of appeal. Defendant's failure to do so may result in the waiver of his right to a direct appeal, unless the trial court failed to admonish defendant in accordance with Rule 605(c). *People v. Claudin*, 369 Ill. App. 3d 532, 533 (2006). Although the trial court is not required to use the exact language of Rule 605(c), it must sufficiently convey the substance of the rule when admonishing defendant. *Dunn*, 342 Ill. App. 3d at 881. We review the trial court's compliance with supreme court rules *de novo*. *People v. Lloyd*, 338 Ill. App. 3d 379, 384 (2003).

¶ 10 Rule 605(c) states that when the trial court sentences a defendant pursuant to a negotiated guilty plea, the admonishments shall include:

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

¶ 11 Here, we find that the trial court substantially admonished defendant in accordance with Rule 605(c). The record shows that the trial court informed defendant of his right to appeal, and the need to first, within 30 days, file a written motion to withdraw his plea or "ask this court to reconsider the sentence." The court also admonished defendant that any issues not raised in such a motion would be waived and that he had a right to a free transcript of the proceedings and an attorney to assist him in preparation of the motion. These admonishments show substantial compliance with subsections (1), (2), (5) and (6) of Rule 605(c). See *Claudin*, 369 Ill. App. 3d at 534; Ill. S. Ct. R. 605(c)(1), (2), (5), (6) (eff. Oct. 1, 2001).

¶ 12 Defendant nevertheless argues that remand is warranted because: (1) the trial court incorrectly stated that he could file a motion to reconsider his sentence as a postplea motion; and (2) failed to address either Rule 605(c)(3) or (c)(4)—that if he was successful in withdrawing his plea, his case would be set for trial and any charges dismissed as part of the plea deal could be reinstated.

¶ 13 Although the trial court incorrectly stated that he could file a motion to reconsider his sentence, defendant did not attempt to file such motion, and thus, was not prejudiced by the court's admonishment. Similarly, defendant was not prejudiced by the court's failure to address subsections (c)(3) and (4) of the Rule, where the record shows that the State did not dismiss any charges as part of the plea deal. That aside, this same argument was considered and rejected in *Claudin*, where this court concluded that a defendant who was substantially admonished of his appeal rights following his guilty plea was not prejudiced by this missing verbiage. See *Claudin*, 369 Ill. App. 3d at 534, citing *People v. Crump*, 344 Ill. App. 3d 558, 563 (2003). Here, as in *Claudin*, the court's admonishment does not provide cause for reversal where the trial court conveyed the substance of the rule and put defendant on notice that, in order to appeal, he needed to first file a postplea motion within 30 days, but defendant failed to file any type of postplea motion. See *Claudin*, 369 Ill. App. 3d at 534 (although the admonitions did not strictly comply with Rule 605(c), they were sufficient to put defendant on notice of the postplea action necessary to preserve his appeal and he ignored it). As such, we find that defendant was substantially admonished pursuant to Rule 605(c) and that his failure to file a Rule 604(d) motion is not cured by the admonition exception. *Claudin*, 369 Ill. App. 3d at 534.

¶ 14 In reaching this conclusion, we are not persuaded by defendant's reliance on *People v. Perry*, 2014 IL App (1st) 122584, where this court remanded for further proceedings after

finding the trial court's admonishments inadequate. Here, unlike *Perry*, the trial court's admonishments were not ambiguous and did not first imply that defendant had 30 days to file a direct appeal from his guilty plea, before filing the requisite Rule 604(d) motions. *Id.* ¶ 17.

Rather, in this case, the record shows that the court specifically admonished defendant that "in order to appeal, you must within 30 days file with the court a written motion asking the court to allow you to withdraw your plea of guilty[.]" As mentioned, this admonishment was sufficient to put defendant on notice of the necessity of first filing a postplea motion in order to appeal, yet defendant failed to file any postplea motion prior to filing his notice of appeal.

¶ 15 For the reasons stated, we conclude that defendant's failure to file a Rule 604(d) motion is not excused by the admonition exception and he has therefore waived his right to a direct appeal.

Accordingly, we dismiss the appeal.

¶ 16 Appeal dismissed.