

No. 1-15-0296

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. 12 CR 14340
)	
TERRANCE OLDEN,)	Honorable
)	Thomas V. Gainer,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for failure to file a post-plea motion when defendant was duly admonished of the requirement to do so. Court is not required to appoint new counsel for 30-day period following plea.

¶ 2 Pursuant to a 2014 negotiated guilty plea, defendant Terrance Olden was convicted of first degree murder and sentenced to 25 years' imprisonment. Defendant now appeals from that judgment without first filing a motion to withdraw his guilty plea. On appeal, he contends that Supreme Court Rules 604(d) (eff. Mar. 8, 2016) and 606(a) (eff. Dec. 11, 2014) are

constitutionally infirm unless we construe them to require the appointment of counsel for the 30-day period following a guilty plea. For the reasons stated below, we disagree and dismiss this appeal.

¶ 3 Defendant was charged with first degree murder and armed robbery for the fatal stabbing of Donald Ellens and taking a telephone, jewelry, and currency from Ellens by force or threat of force while armed with a knife. The crime occurred on or about June 24, 2012.

¶ 4 On September 25, 2014, the defendant's counsel and the State informed the court that they had reached a plea agreement of 25 years' imprisonment for first degree murder, with the armed robbery charge to be *nolle prossquied*. In accepting the plea agreement, the court ascertained that defendant's only prior felony conviction was for a controlled substance offense in 2007 with a sentence of probation. The court ascertained that defendant understood the charge against him and the possible sentencing range, including that his prison sentence would be followed by three years of mandatory supervised release (MSR). The court then admonished defendant that he had the right to a trial either by a judge or jury where he could call and cross-examine witnesses and present evidence and that the State must prove him guilty beyond a reasonable doubt for him to be convicted. Defendant acknowledged understanding these admonishments and further that he was waiving his right to a trial by pleading guilty. He signed waivers of his right to a jury trial and to a presentencing investigation. The court ascertained from defendant that no threats and or promises beyond the plea agreement were made to him to obtain his guilty plea.

¶ 5 The parties stipulated to the factual basis for defendant's plea; specifically that Ellens was found stabbed to death in his home on June 26, 2012, neighbors identified defendant from photographic arrays as being around Ellens' home on June 24, defendant confessed after his

arrest and waiver of his *Miranda* rights to stabbing Ellens and taking some of his property including jewelry. A consensual search of defendant's home found the murder weapon as well as Ellens' jewelry. The court accepted defendant's guilty plea, finding it to be voluntary and supported by a factual basis. The court then found defendant guilty of first degree murder. The State *nolle prosequied* the armed robbery charge. Pursuant to the plea agreement, the court sentenced defendant to 25 years' imprisonment with three years' MSR for first degree murder.

¶ 6 The court admonished defendant of his appeal rights pursuant to Supreme Court Rule 605(c) (eff. Oct. 1, 2001) as follows; he had a right to appeal, however, in order to appeal, he had to file a written motion to vacate his guilty plea within 30 days. The motion had to raise every issue relevant to the appeal and any issue not raised in that motion would be waived. If he successfully filed such a motion, the conviction would be vacated and the case set for trial. If the motion was denied, he would have 30 days to file a notice of appeal. He would have appointed counsel and a free transcript to prepare his motion and appeal if he could not afford a lawyer. Defendant assured the court that he understood these admonishments and had no questions for the court.

¶ 7 In February 2015, defendant received leave to file a late notice of appeal. His *pro se* notice of appeal alleged ineffective assistance of counsel and insufficiency of the evidence. He stated in his late notice of appeal that he had "no access to the law library within 30 days."

¶ 8 On appeal, defendant contends that Supreme Court Rules 604(d) and 606(a) are constitutionally infirm unless we construe them to require the appointment of counsel for the 30-day period following a guilty plea.

¶ 9 Before we reach defendant's constitutional claim, we must address whether there is a non-constitutional basis for granting him relief. *People v. Jackson*, 2013 IL 113986, ¶ 11; *People*

v. Harrison, 2016 IL App (5th) 150048, ¶ 28. There is not. Defendant did not file a motion to withdraw his plea before filing his notice of appeal. A defendant cannot appeal from a conviction upon a guilty plea except by first timely filing a motion to withdraw his guilty plea. He may then appeal a denial of his motion to withdraw his plea. Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016). There is an exception for erroneous Rule 605 admonishments because dismissal of an appeal based on a defendant's failure to file a post-plea motion in the trial court would violate due process if the defendant did not know that filing such a motion was necessary. *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 41 (2011), citing *People v. Flowers*, 208 Ill.2d 291, 301 (2003). However, it is clear that defendant was admonished by the trial court pursuant to Supreme Court Rule 605(c) of the proper procedure for withdrawing his guilty plea and perfecting an appeal. The admonishment clearly advised defendant of the need to file within 30 days, a written motion to withdraw his guilty plea before he may appeal.

¶ 10 Similarly, Rule 604(d) expressly provides for the appointment of counsel to advance a motion to withdraw a guilty plea once such a motion has been filed, while Rule 606(a) expressly provides that either a defendant or his attorney may file a notice of appeal. The relief defendant seeks – the appointment of counsel following a guilty-plea conviction and sentence, is not in the plain language of the Supreme Court Rules.

¶ 11 We must therefore turn to defendant's constitutional claims regarding Rules 604(d) and 606(a); specifically, defendant asserts that those Rules should be construed to constitutionally include a right to counsel. Defendant acknowledges that this court rejected that contention in *People v. Merriweather*, 2013 IL App (1st) 113789, but argues that *Merriweather* was wrongly decided. We see no reason to depart from the sound reasoning of *Merriweather*. In fact, *Merriweather* addresses all of the points and arguments raised by defendant and concludes that

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there is no merit to those arguments. Accordingly, defendant's arguments fail. Therefore defendant has not met the procedural requirements for perfecting an appeal.

¶ 12 Thus, this appeal is dismissed.

¶ 13 Dismissed.