

No. 1-15-0443

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. 11 CR 8254
)	
DEVONTA GUYTON,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pierce and Mason concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's appeal is dismissed where he failed to timely file a Supreme Court Rule 604(d) motion after the trial court adequately admonished him pursuant to Supreme Court Rule 605(c).

¶ 2 Following a fully negotiated guilty plea, Devonta Guyton, the defendant, was convicted of first degree murder (720 ILCS 5/9-1(a)(2) (West 2008)) and sentenced to 35 years' imprisonment and 3 years of mandatory supervised release (MSR). On appeal, defendant

contends that the trial court improperly admonished him pursuant to Illinois Supreme Court Rule 605(b) (Ill. Sup. Ct. R. 605(b) (eff. October 1, 2001)), rather than Rule 605(c). Defendant asks that we remand his case so that he may be properly admonished by the trial court. We find that defendant has forfeited his right to a direct appeal by failing to file a postplea motion within 30 days of the date on which his sentence was imposed. Therefore, we dismiss defendant's appeal.

¶ 3 Defendant was indicted for six counts of first degree murder on May 23, 2011. On September 10, 2014, defendant participated in an Illinois Supreme Court Rule 402 (eff. July 1, 2012) conference, and counsel informed the trial court that the parties were negotiating a plea agreement. The court admonished defendant of the sentencing range applicable to first degree murder with a firearm and the rights defendant would give up by pleading guilty. Defendant indicated he understood, but the court allowed him time to consider the plea agreement. On October 15, 2014, pursuant to a plea agreement, the State amended count two to remove mention of a firearm so that it read, "[Defendant] committed the offense of first degree murder in that he without lawful justification killed Muhammad Sharif doing so by visiting a violent act upon him with an object knowing that act created a strong probability of death or great bodily harm to Muhammad Sharif in violation of Chapter 720 Act 5 Section [9-1(a)(2)] of the Illinois Compiled Statutes," and recommended a prison term of 35 years. The State entered a *nolle prosequi* on the remaining counts.

¶ 4 The parties stipulated to the factual basis for defendant's plea. The factual basis showed that on August 2, 2008 around 12:30 a.m., defendant and his co-defendant, Anthony Ward, approached the victim, Muhammad Sharif, at his business at 2145 South Pulaski in Chicago. Surveillance video showed the victim was carrying money to get change, and defendant and

Ward initiated a physical altercation with him. Defendant then engaged in an act which resulted in the victim's death. A doctor from the Cook County Medical Examiner's Office would testify that the victim's death resulted from defendant's acts and the death was a homicide. Further, co-defendant Ward would testify to "the same fact."

¶ 5 After questioning defendant, the court accepted the factual basis and found that he knowingly and voluntarily entered the plea. Defendant thereafter pleaded guilty to count two, and the court sentenced him to 35 years' imprisonment and 3 years of MSR. Following sentencing, the court admonished defendant as follows:

"THE COURT: Although you have pled guilty and have been sentenced by me, you have the right to appeal everything that happened here. To do that you have to file a motion to withdrawal [sic] your plea. You may also file a motion to modify your sentence. Whatever you file would have to be filed in writing within 30 days. Anything not stated in the filings are waived for purposes of appeal. If you cannot afford lawyers or transcripts, those would be provided free of charge. If you're successful in withdrawing the plea, all the original charges would be reinstated. Do you have any questions at all?

DEFENDANT: No."

¶ 6 On February 17, 2015, four months after sentencing, defendant filed a *pro se* motion to reduce his sentence in the trial court. In his motion, defendant argued that his counsel threatened him, the sentence was excessive, the plea was involuntary, and he had inadequate representation. On the same day, defendant also filed a *pro se* late notice of appeal in this court requesting that the notice of appeal be treated as timely filed, citing his lack of access to the law library. On March 3, 2015, this court allowed defendant's motion for leave to file late notice of appeal.

People v. Guyton, No. 1-15-0443 (order). The trial court "denied" defendant's motion to reduce his sentence on April 14, 2015.

¶ 7 On appeal, defendant contends that the "admonition exception" to Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016) applies because although he failed to file the proper postplea motion, the trial court failed to properly admonish him pursuant to Rule 605(c). The State responds that the trial court's admonishments substantially complied with Rule 605(c) because they informed defendant of the need to file his motion within 30 days, and defendant's motion was untimely.

¶ 8 Rule 604(d) requires a defendant appealing from a guilty plea to file a proper postplea motion within 30 days of the day the sentence is imposed. *People v. Dominguez*, 2012 IL 111336, ¶ 12. Where a defendant fails to file a postplea motion within the required time frame, the appeal should be dismissed. *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). However, the "admonition exception" applies where the defendant failed to comply with the postplea motion requirement of Rule 604(d) because the trial court failed to properly admonish the defendant as required by Illinois Supreme Court Rule 605 (eff. Oct. 1, 2001). *Id.* Where the defendant enters into a negotiated plea, the trial court must admonish the defendant pursuant to Rule 605(c). Ill. Sup. Ct. R. 605(c). The trial court must substantially comply with Rule 605. *Dominguez*, 2012 IL 111336, ¶ 22. The trial court's admonishments are sufficient so long as defendant is properly informed, or put on notice, of what he must do in order to preserve his rights to appeal his guilty plea. *Id.*

¶ 9 Rule 605(c) provides the trial court must admonish defendant that (1) the defendant has a right to appeal; (2) 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) 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) 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) 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) 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.

¶ 10 While the trial court must provide Rule 605(c) admonishments, it need not read the rule verbatim. *Dominguez*, 2012 IL 111336, ¶ 22. We review *de novo* the question of a trial court's compliance with the supreme court rules. *Dominguez*, 2012 IL 111336, ¶ 13.

¶ 11 In this case, the trial court substantially admonished defendant under Rule 605(c) so his appeal must be dismissed for his failure to file a motion to withdraw his guilty plea as required by Rule 604(d). The trial court explained to defendant that he had the right to appeal, but in order to do so, he was required to file a written motion to withdraw his guilty plea with the court within 30 days. We are not persuaded by defendant's contention that he was not advised of his appeal rights because the trial court stated that he "may also file a motion to modify [his] sentence." Although that particular admonishment falls under Rule 605(b), rather than subsection (c), its inclusion in this case did not render the admonishments insufficient. The trial court

explicitly stated that defendant "must file a motion to withdrawal [sic]" his plea, and defendant indicated he did not have questions about the admonishments. We agree with defendant that he could not preserve his appeal rights by filing a motion to modify his sentence, and that the court's reference to such a motion was erroneous. However, we find that it does not warrant reversal here where the court substantially advised defendant of the rule by informing defendant that he had a right to appeal but was first required to file a motion to withdraw his plea within 30 days. See *People v. Claudin*, 369 Ill. App. 3d 532, 534 (2006).

¶ 12 Although the trial court's admonitions did not strictly comply with Rule 605(c), they were sufficient to put defendant on notice of what was required to preserve his appeal; the need to file some kind of postplea motion within 30 days of the date on which the sentence was imposed. *In re J.T.*, 221 Ill. 2d 338, 347-48 (2006). Therefore, because the defendant's failure to file a Rule 604(d) motion to withdraw his guilty plea is not excused under the admonition exception, we find he has forfeited his right to a direct appeal. *Claudin*, 369 Ill. App. 3d at 534-35.

¶ 13 Accordingly, we dismiss the appeal. See *Flowers*, 208 Ill. 2d at 301.

¶ 14 Appeal dismissed.