

2018 IL App (1st) 161662-U

No. 1-16-1662

Order filed August 31, 2018

Sixth Division

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 15 C6 60916
)	
MELISSA WILLIAMS,)	Honorable
)	Frank G. Zelezinski,
Defendant-Appellant.)	Judge, presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held:* We dismiss defendant’s appeal because she did not file a motion to vacate her negotiated guilty plea pursuant to Supreme Court Rule 604(d), and the trial court’s admonishments substantially complied with Supreme Court Rule 605(c).

¶ 2 Defendant Melissa Williams entered a negotiated guilty plea to one count of driving while her license was suspended or revoked (625 ILCS 5/6-303(a) (West 2016)). She was sentenced to 24 months’ probation as a Class 4 offender, with 180 days in the Cook County Department of Corrections “time considered served, time actually served.” On appeal, she argues

the circuit court failed to substantially comply with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001) when it admonished her as to what she must do to appeal from her negotiated guilty plea. We dismiss the appeal.

¶ 3 On May 16, 2016, defendant pleaded guilty to driving while her license was suspended or revoked. The factual basis for the plea indicated that a Park Forest police officer pulled defendant over after observing her vehicle had one headlight out. Defendant admitted to having a suspended license, and a certified copy of her driving abstract reflected that her driving privileges were suspended or revoked on the date that the Park Forest police officer stopped her. In addition, defendant had “previously violated [the statute prohibiting driving while license is suspended or revoked], three times prior to this.” After accepting the guilty plea, the trial court admonished defendant about her right to appeal as follows:

“[THE COURT:] Now, you do have the right to appeal the Court’s finding in this matter. In order to do so, within 30 days of today’s date you must file a written petition to either vacate your plea, vacate your sentence, or seek to reduce your sentence. This petition must be in writing and filed with this trial court. State all reasons why you wish to do any of these things. Any issues not raised in this petition will be considered waived for purposes of a further appeal.

If you are in need of a lawyer to help you to appeal this matter but cannot afford one because you are a poor person, the Court would provide one for you in addition to any necessary transcripts of court proceedings for those purposes. And if this petition is in fact presented to this Court and granted, then at that point then the current conviction and sentence would be vacated and this matter once again would be placed on this

Court's trial for further proceedings. And at that point State could seek to reinstate any previously dismissed charges which were dismissed during the course of your entering this plea.”

¶ 4 Defendant did not file any post-plea motions. She filed a *pro se* notice of appeal on June 13, 2016.

¶ 5 On appeal, defendant argues the trial court failed to substantially comply with Rule 605(c) in admonishing her as to what she must do to appeal from her negotiated guilty plea. She asks us to remand the matter for proper admonishments so that she has the opportunity to file a motion to withdraw her guilty plea with the assistance of counsel.

¶ 6 Pursuant to Supreme Court Rule 604(d) (eff. Mar. 8, 2016), a defendant who desires to appeal from a judgment entered upon a guilty plea must first file a written postplea motion in the circuit court within 30 days of the date on which sentence was imposed. Ill. S. Ct. R. 604(d) (eff. Mar. 8, 2016). Filing a timely Rule 604(d) motion is a condition precedent to appeal a guilty plea, and failure to do so precludes the appellate court from addressing the merits of the appeal and the appeal must be dismissed. *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40 (2011).

¶ 7 However, “[d]ismissal of an appeal based on a defendant’s failure to file the requisite motions in the circuit court would violate due process if the defendant did not know that filing such motions was necessary.” *Id.* at 41. Therefore, in cases where a defendant is sentenced on a guilty plea, Rule 605 requires the trial court to admonish a defendant at sentencing regarding the steps necessary to preserve her right to appeal. See *id.* If the trial court fails to properly admonish a defendant in accordance with Rule 605, we are empowered to remand the matter for the defendant to receive proper admonishments. *People v. Dominguez*, 2012 IL 111336, ¶ 11.

¶ 8 As defendant entered into a negotiated guilty plea, Supreme Court Rule 605(c) controls.

It provides, in relevant part,

“In all cases in which a judgment is entered upon 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 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 of 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 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).

¶ 9 Rule 605(c) requires that the trial court substantially advise a defendant “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. Where the court’s admonishments impart “to a defendant the essence or substance of the rule, the court has substantially complied with the rule.” *Id.* Our review of the trial court’s compliance with supreme court rules is *de novo*. *Id.* ¶ 13.

¶ 10 The record shows that the circuit court’s admonitions substantially advised defendant as to what is required in order to appeal her guilty plea. Specifically, the court told her that:

- (1) She has a right to appeal (see Rule 605(c)(1)).
- (2) “In order to do so,” she had to file “with this trial court” within 30 days a “written petition” to either withdraw the guilty plea (see Rule 605(c)(2)), or vacate the sentence, or reduce the sentence plea (see Rule 605(b)(2)) setting forth the reasons for her request.
- (3) Any issues not raised in the petition would be waived “for purposes of a further appeal” (see Rule 605(c)(6)).
- (4) If she was a poor person, the court would provide a “lawyer to help you to appeal this matter *** in addition to any necessary transcripts of court proceedings for those purposes” (see Rule 605(c)(5)).
- (5) If the motion to withdraw was presented to “this Court” and granted, then the conviction and sentence would be vacated and the matter “would be placed on this Court’s trial for further proceedings” (see Rule 605(c)(3)).
- (6) The State could move to reinstate the dismissed charges (see Rule 605(c)(4)).

Therefore, the circuit court's admonishments substantially advised defendant and put her on notice as to what was required under Rule 605(c) in order to appeal her guilty plea. See *Dominguez*, 2012 IL 111336, ¶ 22.

¶ 11 Defendant argues the trial court's admonishments did not substantially comply with Rule 605(c)(2) because the court stated that defendant "[i]n order to [appeal], within 30 days of today's date you must file a written petition to *either* vacate your plea, vacate your sentence, *or* seek to reduce your sentence." (Emphasis added.). This is the Rule 605(b)(2) requirement for appealing from a non-negotiated guilty plea, which provides a defendant must file a written motion asking the trial court either "to reconsider the sentence or to have the judgment vacated and for leave to withdraw the plea of guilty." See Ill. S. Ct. R. 605(b)(2). But defendant entered into a negotiated plea. Therefore, pursuant to Rule 605(c)(2), she could only preserve her appeal rights by filing a motion to have her judgment vacated and for leave to withdraw her guilty plea, not by filing a motion to reconsider sentence. Ill. S. Ct. R. 605(c)(2).

¶ 12 Although the court incorrectly informed defendant she could file a motion to vacate or reduce her sentence, it sufficiently put her on notice that she needed to file some sort of postplea petition within 30 days. Defendant did not file any postplea motion, and instead filed a notice of appeal. Accordingly, although the admonishment did not strictly comply with Rule 605(c)(2), defendant was advised that a postplea motion was necessary to preserve her appeal, and she did not do so. See *People v. Claudin*, 369 Ill. App. 3d 532, 534 (2006). Therefore, her failure to file a 604(d) postplea motion is not excused. *Id.*

¶ 13 Defendant next argues the court failed to substantially advise her under Rule 605(c) because it failed to mention that she would be required to file a notice of appeal if her written

petition were denied. Defendant does not provide support for this assertion, and our review of Rule 605(c) shows it does not require the court to provide any admonishment regarding filing a notice of appeal after a postplea motion is denied. Instead, the court must, as it did here, advise the defendant of her right to appeal her guilty plea and substantially advise her that to preserve her right to appeal she must first file a postplea motion.

¶ 14 Finally, defendant argues the court's admonishments were insufficient under Rule 605(c)(5), because it told her it would appoint counsel "to help [her] to appeal this matter" but not that she was entitled to assistance of counsel in filing the postplea motion. The court informed defendant that, if she needed a lawyer to help her "appeal this matter" but could not afford one, the court would provide one, as well as "any necessary transcripts of court proceedings for those purposes." Although the court did not explicitly advise defendant she was entitled to have an attorney appointed to assist her in preparing the postplea motions, we find the admonishment did "convey the substance of the rule" to defendant and satisfied Rule 605(c)(5), as she was put on notice that a court-appointed attorney was available to her if she was indigent. See *Dominguez*, 2012 IL 111336, ¶ 51 (citing *People v. Dunn*, 342 Ill. App. 3d 872, 882 (2003)).

¶ 15 Citing *People v. Perry*, 2014 IL App (1st) 122584, defendant argues the admonishments here were ambiguous, requiring us to remand for further post-plea proceedings. In *Perry*, the trial court had admonished the defendant, stating, in part,

"Sir, you have the right to appeal; that has to be filed within 30 days of today's date in writing, indicating all the reasons you want to withdraw that plea.

If I grant that motion, the plea will be set aside and the matter will be set for trial.
If I deny it, you have 30 days to appeal in writing, and if you don't have the money to

hire a lawyer, one will be provided for you, free of charge.” *Perry*, 2014 IL App (1st) 122584, ¶ 5.

On appeal, this court found the trial court’s admonishments inadequate under Rule 605(c) and remanded for further proceedings. *Id.* ¶¶ 16-17, 25. We held, in relevant part, that the trial court improperly implied that the defendant had 30 days to file a direct appeal, rather than a motion to vacate the judgment prior to filing an appeal, and the admonishment lacked the specificity necessary to resolve any ambiguity. *Id.* ¶ 17.

¶ 16 Unlike in *Perry*, the court’s admonishments here were not ambiguous, did not suggest defendant had 30 days to file a direct appeal rather than a postplea motion, and did not conflate a post plea motion and a notice of appeal. Rather, the court here admonished defendant that, in order to appeal, she must file a written petition with the circuit court to withdraw the guilty plea, vacate the sentence, or reduce the sentence. Crucially, the court then warned defendant that “[a]ny issues not raised in this petition will be considered waived for purposes of a further appeal,” thus clearly separating the requirement of a postplea written motion from a subsequent appeal. *Perry* is therefore distinguishable.

¶ 17 As defendant points out, her filing the notice of appeal expressed her desire to challenge the plea. However, she ignored the court’s admonishment that she must file a written petition with the trial court raising the challenges, and that any issues not raised in the petition would be waived in a subsequent appeal. While the admonishments did not use the exact language found in Rule 605(c), they were “sufficient to impart the essence or substance of the rule to defendant.” *Dominguez*, 2012 IL 111336, ¶ 54. Therefore, where, as here, the court’s admonishments substantially advised defendant regarding what is required in order to appeal her guilty plea

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pursuant to Rule 605(c), her failure to comply with Rule 604(d) is not excused. Accordingly, we cannot consider the merits of her appeal and must dismiss it. See *People v. Flowers*, 208 Ill. 2d 291, 301 (2003).

¶ 18 Appeal dismissed.