

2018 IL App (1st) 162904-U

No. 1-16-2904

Order filed December 10, 2018

First 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 16 CR 08992
	)	
MICHAEL BAIRD,	)	Honorable
	)	Timothy Chambers,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Justices Griffin and Walker concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's appeal dismissed because he did not file a motion to vacate his 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 Michael Baird entered a negotiated plea of guilty to burglary (720 ILCS 5/19-1(a) (West 2016)), and was sentenced, due to his criminal background, to a class X sentence of six years in prison. On appeal, defendant contends that this cause must be remanded so that he has the opportunity to file a motion to withdraw his guilty plea because the trial court failed to

substantially admonish him pursuant to Supreme Court Rule 605(c) (eff. Oct. 1, 2001). We dismiss his appeal.

¶ 3 On June 29, 2016, defendant entered a plea of guilty to burglary and was sentenced to six years in prison. Prior to accepting defendant's plea, the trial court explained the applicable sentencing range and asked defendant, knowing what he was charged with and the possible penalties, whether defendant wished to plead guilty. Defendant answered in the affirmative, and indicated that he wished to enter a guilty plea. The State then presented the factual basis for the plea.

¶ 4 The factual basis for the plea indicated that on April 21, 2016, defendant entered the basement of a condo building located on West Briar Place in Chicago, broke into the personal storage locker of Ashita Samant, and removed certain items without her permission. The State's evidence would also include a video from the storage locker area showing defendant leaving with a backpack belonging to Samant that contained her property. The State's evidence would further include testimony from Samant who would identify her property and testify that she did not know defendant and did not give him permission enter her storage locker.

¶ 5 The trial court accepted the factual basis for the plea, accepted defendant's guilty plea and sentenced defendant to six years in prison. The trial court then stated that:

“Even though you pled guilty, you have the right to an appeal. In order to appeal, you must within 30 days file a written motion asking this Court to reconsider sentence and withdraw your plea setting forth in writing the grounds for that motion. If it's granted, the plea, judgment, [and] sentence will be vacated. You'll go to trial on those

charges. If it's denied, you have the right to appeal. Anything not in the written motion is waived. Is that clear?"

¶ 6 Defendant indicated that he understood. On October 19, 2016, defendant filed a *pro se* notice of appeal in the circuit court. On November 4, 2016, defendant filed a *pro se* motion for leave to file a late notice of appeal in this court. This court granted defendant's motion, and appointed the State Appellate Defender to represent him on appeal.

¶ 7 On appeal, defendant contends that the trial court failed to substantially comply with Supreme Court Rule 605(c) when admonishing him as to what he must do to appeal from his negotiated guilty plea. He asks that this cause be remanded to the circuit court for proper admonishments and the opportunity to file a motion to withdraw his guilty plea.

¶ 8 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. Filing a timely Supreme Court Rule 604(d) motion is a condition precedent to the appeal of a guilty plea, and the failure to do so precludes this 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).

¶ 9 However, the "[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 those cases where a defendant is sentenced on a guilty plea, Supreme Court Rule 605 requires the trial court to admonish the defendant at sentencing regarding the steps necessary to preserve the right to appeal. *Id.* If the court fails to admonish a defendant in accordance with Supreme Court Rule 605, this court can remand the

matter to the circuit court so that the defendant can be properly admonished. *People v. Dominguez*, 2012 IL 111336, ¶ 11.

¶ 10 A trial court is not required to use the exact language of the rule; rather, the court must “ ‘substantially’ ” advise the defendant in such a way that he is put on notice of what he must do in order to preserve his right to appeal his guilty plea or sentence. *Id.* ¶¶ 11, 22. “[I]n a Rule 605(b) or (c) setting, where a trial court *has* substantially complied with the rule so as to impart to the defendant the *substance* of the rule, automatic remand is not necessary.” (Emphasis in original.) *Id.* ¶ 22. We review the trial court’s compliance with a supreme court rule *de novo*. *Id.* ¶ 13.

¶ 11 In the case at bar, defendant entered into a negotiated guilty plea, and Supreme Court Rule 605(c) controls. The rule states, in pertinent 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).

¶ 12 Here, the record reveals that the trial court’s admonishments substantially advised defendant as to what was required in order to appeal his guilty plea. Specifically, the court admonished defendant that: (1) he had the right to appeal; (2) in order to appeal, he must file within 30 days a written motion in the trial court; (3) any issues not raised in the motion would be waived; and (4) if the motion was granted, the plea and sentence will be vacated and defendant would go to trial. See Ill. S. Ct. R 605(c) (eff. Oct. 1, 2001). We therefore find that the trial court substantially provided the admonishments required by Supreme Court Rule 605(c) when defendant was put on notice that he could challenge the guilty plea but that in order to do so an action on his part, *i.e.*, the filing of a motion in the trial court within 30 days, was required. See *Dominguez*, 2012 IL 111336, ¶ 22 (a trial court has substantially complied with the rule when its “admonitions were sufficient to impart to a defendant the essence or substance of the rule”).

¶ 13 Defendant, however, argues the trial court’s admonishments did not substantially comply with Supreme Court Rule 605(c) because the court stated that defendant had to file a motion to “reconsider sentence and withdraw your plea,” and did not tell defendant that if he was indigent, he was entitled to counsel and a free transcript.

¶ 14 The record reveals that although defendant entered into a negotiated plea, the trial court admonished him with the requirement for appealing from a non-negotiated guilty plea, which provides a defendant must file “a written motion asking to have the trial court reconsider the sentence or to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion.” See Ill. S. Ct. R. 605(b)(2) (eff. Oct. 1, 2001). However, because defendant entered into a negotiated plea, he could only preserve his right to appeal by filing a motion to have the judgment vacated and for leave to withdraw the guilty plea. See Ill. S. Ct. R. 605(c)(2) (eff. Oct. 1, 2001) (the defendant must file “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”). Defendant is also correct that the trial court failed to inform him that he was entitled to counsel and a free transcript. See Ill. S. Ct. R. 605(c)(5) (eff. Oct. 1, 2001) (“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”).

¶ 15 However, we cannot agree that the trial court failed to substantially comply with Supreme Court Rule 605(c), as the trial court put defendant on notice that he needed to file a postplea motion before the court within 30 days. Although the trial court’s admonishments did not mirror the language of Supreme Court Rule 605(c), defendant did not file a postplea motion despite

being informed that he was required to file a written motion within 30 days, that anything not in the motion would be considered waived, and that if the motion was granted he would go to trial. In other words, defendant was informed of “the *substance* of the rule,” yet failed to file any sort of postplea motion. *Dominguez*, 2012 IL 111336, ¶ 22 (Emphasis in original.) Put another way, defendant was advised that a postplea motion was necessary to preserve his right to appeal, and yet, he failed to file any sort of postplea motion. See *People v. Claudin*, 369 Ill. App. 3d 532, 534 (2006).

¶ 16 We are unpersuaded by defendant’s reliance on *People v. Lloyd*, 338 Ill. App. 3d 379 (2003). In that case, the trial court admonished the defendant that he had:

“the right to appeal. But before you can appeal, you must first file in this court within 30 days a written motion asking to withdraw your plea of guilty. You would have to set forth in that motion valid legal reasons why you’re asking to withdraw your plea of guilty. Any reason you fail to set forth in your motion, you would give up for purposes of appealing that issue.” *Id.* at 381-82.

¶ 17 On appeal, the court noted the trial court did not admonish defendant that counsel would be appointed for postplea proceedings, and that “it is not the precise wording used that is at issue, but the lack of any wording at all.” *Id.* 385. The court therefore concluded that when “it is undisputed that defendant was not so informed, there could not be substantial admonishment under Rule 605(c).” *Id.*

¶ 18 Defendant is correct that the *Lloyd* court found that the trial court’s failure to admonish defendant pursuant to Supreme Court Rule 605(c)(5), regarding the availability of counsel meant that the trial court failed to substantially comply with the rule. However, our supreme court has

significantly clarified the scope of Supreme Court Rule 605 since *Lloyd* was decided and has more recently focused on whether a trial court's admonishments put a defendant "on notice" of the steps he must take in order to appeal. See *Dominguez*, 2012 IL 111336, ¶ 22 (the trial court must " 'substantially' advise" a defendant pursuant to Supreme Court Rule 605(c) so that he "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").

¶ 19 For example, in *In re J.T.*, 221 Ill. 2d 338, 347-48 (2006), our supreme court found that the trial court's admonitions, although they did not strictly comply with Supreme Court Rule 605(c), were nonetheless sufficient to put the juvenile respondent on notice that he could challenge his guilty plea and that "some action" on his part within 30 days was necessary if he wished to appeal. In that case, because the respondent took no action whatsoever to challenge the plea until years later, our supreme court concluded that he should not be excused from taking the proper steps to appeal his plea based on admonishments that did not "strictly comply" with Supreme Court Rule 605(c). *Id.* See also *People v. Crump*, 344 Ill. App. 3d 558, 563 (2003) (although the trial court did not inform the defendant that any issues not raised in his postplea motion would be waived on appeal, the defendant was "substantially advised" of his rights and "was not prejudiced by the missing verbiage" because he did not file any postplea motion with the trial court); *Claudin*, 369 Ill. App. 3d at 534 (although the defendant was misinformed as to the type of postplea motion that he had to file in order to appeal, the admonishments that he received "were sufficient to put [the] defendant on notice of the postplea action necessary to preserve his appeal, and he ignored [them]").



¶ 20 Here, there is no dispute that defendant was put on notice that in order to appeal he had to file a written motion within 30 days. Although the trial court did not admonish defendant that was entitled to the assistance of counsel for his postplea motion, we cannot agree that there was a causal connection between this deficiency and defendant's failure to file a postplea motion within 30 days because in order to trigger defendant's entitlement to the assistance of appointed counsel, defendant would first have to file a timely postplea motion, and in this case, defendant did not. See *People v. Merriweather*, 2013 IL App (1st) 113789, ¶ 25 ("Rule 604(d) expressly states that the trial court shall appoint counsel to represent an indigent defendant, if the defendant so chooses, *after* he files a proper postplea motion" (Emphasis in original.)).

¶ 21 Ultimately, while the admonishments in the case at bar did not use the exact language found in Supreme Court Rule 605(c), they were "sufficient to impart the essence or substance of the rule to defendant." *Dominguez*, 2012 IL 111336, ¶ 54. Therefore, defendant's failure to comply with Rule 604(d) is not excused, and we cannot consider the merits of his appeal and must dismiss it. See *People v. Flowers*, 208 Ill. 2d 291, 301 (2003).

¶ 22 Appeal dismissed.