

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).

2018 IL App (4th) 150656-U

NO. 4-15-0656

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 28, 2018
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
JOSEPH MIGUEL,)	No. 14CF293
Defendant-Appellant.)	
)	Honorable
)	Nancy S. Fahey,
)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant’s appeal presents no meritorious issues for review. The trial court’s judgment is affirmed and OSAD’s motion to withdraw as appellate counsel is granted.

¶ 2 Defendant, Joseph Miguel, pleaded guilty to predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2014)) in exchange for an agreed sentencing cap of 20 years in prison and the dismissal of a charge of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2014)). The trial court sentenced him to 20 years in prison. Defendant appealed, and the office of the State Appellate Defender (OSAD) was appointed to represent him. On appeal, OSAD filed a motion to withdraw as appellate counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting the appeal presents no meritorious issues for review. We grant OSAD’s motion and affirm the trial court’s judgment.

¶ 3

I. BACKGROUND

¶ 4 In June 2014, the State charged defendant with predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2014)) (count I) and aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2014)) (count II) based upon allegations that defendant touched a minor child's, K.M.B.s, vaginal area when she was under 13 years of age.

¶ 5 On May 18, 2015, defendant pleaded guilty to the charge of predatory criminal sexual assault of a child. In exchange, the State agreed to a sentencing cap of 20 years in prison and the dismissal of the remaining charge of aggravated criminal sexual abuse. Prior to accepting defendant's guilty plea, the trial court admonished defendant of his rights and informed him that the offenses for which he was charged carried a possible prison sentence of 6 to 60 years. Defendant advised the court he understood. He confirmed his signature on the jury waiver form and his understanding of the rights he was relinquishing by signing that form. Defendant stated that he had not been forced to enter his guilty plea nor promised anything beyond what was contained in the plea agreement. When asked whether he was entering his plea freely and voluntarily, defendant responded, "Yes, I am." Defendant also signed an "Admonishment of Rights" form. Following the State's recitation of the factual basis for the plea, the court found defendant's plea to be knowing and voluntary and accepted his plea of guilty.

¶ 6 On July 20, 2015, the trial court held a sentencing hearing. The State presented testimony from two witnesses, the victim's mother and godmother, who both read their victim impact statements. Defense counsel presented no evidence. The State then recommended a sentence of 20 years' imprisonment. In support of its recommendation, the State noted defendant's prior criminal record, his poor employment history, and the impact the crime had on

K.M.B. and her family. Defense counsel requested a sentence of six years' imprisonment. In support of a lower sentence, defense counsel emphasized defendant's remorse, his admission of guilt, and that he had generally led a law-abiding life. Defendant then made a statement in allocution. The trial court sentenced defendant to 20 years in prison.

¶ 7 Following the sentencing hearing, the trial court advised defendant of his right to appeal. The court stated, in pertinent part, as follows:

“Sir, this is a final and appealable order. You have the right to appeal. Prior to taking an appeal, you must file in the trial court[,] within 30 days of the date on which [the] sentence is imposed, a written motion asking to have the judgment vacated and for leave to withdraw your plea, setting forth the grounds for the motion. If the motion is allowed, the plea, sentence[,] and judgment will be vacated and a trial date will be set on the charges to which the plea was made. Upon the request of the State, any charges that may have been dismissed as a part of the plea agreement will be reinstated and also set for trial. If you can't afford it, a copy of the transcript of the proceedings will be provided for you at no cost and an attorney will be appointed to represent you. In any appeal taken from the judgment, any issue or claim of error not raised in your written motion will not be considered by the [a]ppellate [c]ourt.”

When asked whether he understood his appeal rights, defendant responded, “Yes, I do.”

¶ 8 On July 28, 2015, defendant filed a motion to reconsider his sentence, arguing that his sentence was excessive. He did not file a motion to withdraw his guilty plea. On August 5, 2015, the trial court denied defendant's motion to reconsider his sentence.

¶ 9 This appeal followed. OSAD was appointed to represent defendant on appeal and filed a motion to withdraw, alleging the appeal presents no meritorious issues for review. OSAD attached a brief to its motion and the record shows service on defendant. This court granted defendant leave to file a response to OSAD's motion to withdraw, but no response was filed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, OSAD identifies three potential issues for review: whether (1) the trial court erred in denying defendant's motion to reconsider his sentence; (2) defendant entered a knowing and voluntary guilty plea; and (3) defendant's failure to file a motion to withdraw his guilty plea may be excused where defendant was properly admonished under Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001). OSAD maintains all three issues lack merit. We agree.

¶ 12 A. Defendant's Motion to Reconsider Sentence

¶ 13 First, OSAD contends no colorable argument can be made that the trial court erred in denying defendant's motion to reconsider his sentence because he specifically agreed to a sentencing cap of 20 years' imprisonment and failed to file a timely motion to withdraw his guilty plea.

¶ 14 To challenge a sentence after entering a negotiated guilty plea, defendant must first file a motion to withdraw the guilty plea pursuant to Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). See *People v. Linder*, 186 Ill. 2d 67, 68, 708 N.E.2d 1169, 1170 (1999). Specifically, Rule 604(d) states, in pertinent part, as follows:

“No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment.

For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending.” Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014).

In *People v. Evans*, 174 Ill. 2d 320, 332, 673 N.E.2d 244, 250 (1996), our supreme court held that, “following the entry of judgment on a negotiated guilty plea, even if a defendant wants to challenge only his sentence, he must move to withdraw the guilty plea and vacate the judgment so that, in the event the motion is granted, the parties are returned to the status quo.” Relying on contract principles, the court in *Evans* explained, “[t]o permit a defendant to challenge his sentence without moving to withdraw the guilty plea in these instances would vitiate the negotiated plea agreement he entered into with the State.” *Id.* In *People v. Linder*, our supreme court stated that, where a sentence is imposed within the agreed upon sentencing range under a negotiated guilty plea, allowing a defendant to later challenge his sentence without first moving to withdraw his guilty plea would “unfairly bind[] the State to the terms of the plea agreement while giving the defendant the opportunity to avoid or modify those terms.” *Linder*, 186 Ill. 2d at 74. “While the defendant may not like the sentencing court’s ultimate disposition, that is a risk he assumes as part of his bargain.” *Id.* “By agreeing to a potential range of sentences, a defendant implicitly concedes that a sentence imposed within the range cannot be excessive.” *People v. Catron*, 285 Ill. App. 3d 36, 37, 674 N.E.2d 141, 142 (1996).

¶ 15 Here, defendant entered into a negotiated guilty-plea agreement where the State dismissed one of the charges against defendant and agreed to a sentencing cap of 20 years’

imprisonment. The trial court imposed a 20-year sentence. Defendant subsequently filed a motion to reconsider his sentence, challenging the sentence as excessive. However, because defendant did not file a motion to withdraw his guilty plea prior to challenging his sentence, we find that he failed to comply with the requirements under Rule 604(d). The sentence imposed was within the agreed-upon range under the negotiated plea agreement, and that was a risk defendant assumed as part of his bargain. *Linder*, 186 Ill. 2d at 74. To permit defendant to challenge his sentence without moving to withdraw the guilty plea would “vitate the negotiated plea agreement he entered into with the State.” *Evans*, 174 Ill. 2d at 332. We thus find no colorable argument can be made that the trial court erred by denying the motion to reconsider sentence where defendant failed to file a motion to withdraw his guilty plea.

¶ 16 B. Knowing and Voluntary Guilty Plea

¶ 17 Next, OSAD considers whether defendant entered a knowing and voluntary guilty plea.

¶ 18 “For a guilty plea to be constitutionally valid, the record must reflect that a defendant’s guilty plea was intelligently and voluntarily made.” *People v. Blankley*, 319 Ill. App. 3d 996, 1007, 747 N.E.2d 16, 25 (2001). To determine whether defendant entered a knowing and voluntary guilty plea, Illinois Supreme Court Rule 402(a) (eff. July 1, 2012) requires the trial court to admonish defendant of his rights prior to accepting a guilty plea. “Substantial compliance” with Rule 402(a) is sufficient. (Internal quotation marks omitted.) *People v. Dennis*, 354 Ill. App. 3d 491, 495, 820 N.E.2d 1190, 1193 (2004). Whether a trial court substantially complied with the admonishment requirements presents a legal question, which we review *de novo*. *People v. Bowens*, 407 Ill. App. 3d 1094, 1104, 943 N.E.2d 1249, 1261 (2011).

¶ 19 In pertinent part, Rule 402(a) states as follows:

“The court shall not accept a plea of guilty *** to convict without first, by addressing the defendant personally in open court, informing him or her of and determining that he or she understands the following:

(1) the nature of the charge;

(2) the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences;

(3) that the defendant has the right to plead not guilty, or to persist in that plea if it has already been made, or to plead guilty; and

(4) that if he or she pleads guilty there will not be a trial of any kind, so that by pleading guilty he or she waives the right to a trial by jury and the right to be confronted with the witnesses against him or her ***.” Ill. S. Ct. R. 402(a) (eff. July 1, 2012).

¶ 20 In this case, defendant was properly admonished pursuant to Rule 402(a). *Id.* The transcript of the hearing demonstrates the trial court informed defendant the offenses for which he was charged carried a possible prison sentence of 6 to 60 years. The court stated he had a right to plead guilty or not guilty. The court informed defendant that, by pleading guilty, there would not be a trial or an opportunity to confront witnesses against him. Defendant acknowledged he understood. He confirmed his signature on the jury waiver form and his understanding of the rights he was relinquishing by signing that form. Defendant stated he had not been forced to enter his guilty plea nor promised anything beyond what was contained in the plea agreement.

When asked whether he was entering his guilty plea freely and voluntarily, defendant responded, “Yes, I am.” Defendant also signed an “Admonishment of Rights” form. At the conclusion of the hearing, the trial court found defendant understood his rights and he knowingly and voluntarily waived those rights. Thus, we agree with OSAD that no colorable argument can be made that defendant’s guilty plea was not entered knowingly or voluntarily.

¶ 21 C. Admonishments

¶ 22 Finally, OSAD considers whether defendant’s failure to file a motion to withdraw his guilty plea may be excused where defendant was properly admonished under Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001).

¶ 23 Generally, as previously stated, where a defendant enters a negotiated guilty plea, he cannot challenge the sentence imposed unless he files a motion to withdraw his guilty plea pursuant to Rule 604(d). Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014). Our supreme court has stated, however, that Rule 604(d) “is not without exceptions.” *People v. Flowers*, 208 Ill. 2d 291, 301, 802 N.E.2d 1174, 1180 (2003). “Rule 605(c), which complement[s] Rule 604(d) and serve[s] as a corollary to the requirements of Rule 604(d), provide[s] the admonitions the trial judge must give a defendant when imposing sentence on a defendant who has pled guilty.” *People v. Dominguez*, 2012 IL 111336, ¶ 13, 976 N.E.2d 983. “If the trial court fails to give the admonishments set forth in Rule 605 and the defendant subsequently attempts to appeal without first filing the motions required by Rule 604(d) *** the appropriate course is to remand the cause to the trial court for strict compliance with Rule 604(d).” *Flowers*, 208 Ill. 2d at 301.

¶ 24 Rule 605(c) provides as follows:

“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 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).

¶ 25

Rule 605(c) must be strictly complied with "in that the admonitions *must* be

given.” (Emphasis in original.) *Dominguez*, 2012 IL 111336, ¶ 21. However, the rule “need not be read nearly verbatim.” *Id.* ¶ 22. “Rather, *** the court must ‘substantially’ advise a defendant under Rule 605(c) 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.” *Id.* “So long as the court’s admonitions were sufficient to impart to a defendant the essence or substance of the rule, the court has substantially complied with the rule.” *Id.* “A trial court’s compliance with the admonition requirements of Supreme Court Rule 605 is reviewed *de novo*.” *People v. Young*, 387 Ill. App. 3d 1126, 1127, 903 N.E.2d 434, 435 (2009).

¶ 26 Here, the record reveals that the trial court advised defendant of his right to appeal and that he was required to file a motion to withdraw his guilty plea within 30 days of the imposition of the sentence. The court’s admonishments tracked the language in Rule 605(c) almost verbatim, and defendant was thus put on notice that he was required to file a motion to withdraw his guilty plea prior to challenging his sentence. The record shows the court substantially complied with the requirements of Rule 605(c). Accordingly, we agree with OSAD that defendant can make no colorable argument that his failure to file a motion to withdraw his guilty plea should be excused because of deficient admonishments.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we grant OSAD’s motion to withdraw as appellate counsel and affirm the trial court’s judgment.

¶ 29 Affirmed.