

NOTICE
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2018 IL App (5th) 170422-U

NO. 5-17-0422

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jackson County.
)	
v.)	No. 14-CF-499
)	
TERRANCE D. GODFREY,)	Honorable
)	William G. Schwartz,
Defendant-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.*

ORDER

- ¶ 1 *Held:* The denial of the defendant's motion to withdraw his guilty plea is affirmed where, considering the oral admonishments together with the written guilty plea form, the court substantially complied with Illinois Supreme Court Rule 402(a) (eff. July 1, 2012).
- ¶ 2 The defendant, Terrance Godfrey, appeals the circuit court's denial of his motion to withdraw his guilty plea following a hearing. He argues that he is entitled to withdraw his guilty plea because the court failed to admonish him, before accepting his plea, of his right to a jury or a bench trial, of his right to confront the witnesses against him, and of

*Justice Goldenhersh fully participated in the decision prior to his retirement. See *Cirro Wrecking Co. v. Roppolo*, 153 Ill. 2d 6 (1992).

his right to plead not guilty or persist in a plea of not guilty. For the following reasons, we affirm the denial of his motion.

¶ 3 On December 1, 2014, the State charged the defendant with one count of residential burglary (720 ILCS 5/19-3(a) (West 2012)), a Class 1 felony, in that he knowingly and without authority entered a dwelling with the intent to commit a theft. On February 17, 2015, the defendant entered a negotiated guilty plea to one count of residential burglary, punishable as a Class X offense based on his criminal history. In exchange for the guilty plea, the State agreed to recommend a sentence of 10 years' imprisonment. The defendant also requested a two-week furlough to spend time with his daughter and to make plans to store his belongings. The defendant was given an opportunity to talk to his attorney before entering the plea.

¶ 4 During the guilty plea hearing, the trial court admonished the defendant as follows. In describing the minimum and maximum sentences prescribed by law, the court stated:

"Mr. Godfrey, the information in this case, as I indicated earlier, you are charged with residential burglary, when on November 27th, you knowingly, without authority entered the dwelling place of Joseph Schumack [and] Joel Clements *** with the intent to commit therein a theft, making it a Class 1 felony, which is enhanced to a Class X based upon your prior criminal history, meaning it is punishable by six to 30 years in the Illinois Department of Corrections. It is not a probationable offense. It is punishable by a fine of up to \$25,000 and it carries with it a mandatory supervised release time of a three-year period. Do you understand that, sir?"

The defendant indicated that he understood the possible penalties. The following exchange then occurred between the court and the defendant:

"THE COURT: I am going to show you a plea of guilty form. Did you read that form, sir?

[THE DEFENDANT]: Yes, sir.

THE COURT: Did you understand what you read?

[THE DEFENDANT]: Yes, Your Honor.

THE COURT: Any questions about it?

[THE DEFENDANT]: No, sir.

THE COURT: Is that what you want to do, enter a plea of guilty?

[THE DEFENDANT]: Yes, I do.

THE COURT: Find that the plea of guilty is knowingly and voluntarily entered into."

The State then provided the factual basis for the charge and a recitation of the defendant's criminal history. The court found the factual basis sufficient to support the plea and accepted the guilty plea. Thereafter, the court sentenced the defendant to 10 years' imprisonment to be followed by 3 years' mandatory supervised release (MSR). The court granted the defendant's request for a furlough and ordered that he surrender himself to the Jackson County sheriff on February 25, 2015, at 1 p.m.

¶ 5 The written guilty plea form contained a handwritten section, which described the sole count as residential burglary, punishable as a Class X based on the defendant's criminal history. Below the handwritten section, there was a typewritten paragraph, which stated as follows:

"I understand that by pleading guilty I am giving up my right to trial, including my right to a jury trial. I am also giving up my right to confront witnesses and subpoena witnesses on my behalf. I understand the nature of the offense and the possible penalties. I understand that if I plead guilty, the Court may sentence me up to the maximum penalty provided for this offense without hearing witnesses or having a trial. No threats have been made to get me [*sic*] to plead guilty."

The form also contained another typewritten section, which stated as follows:

"Negotiated Plea: This plea is entered pursuant to an agreement between the State and the Defendant under Illinois Supreme Court Rule 402(d) which contemplates a specified sentence will be imposed and/or that other charges before the Court will be dismissed. The parties request the Court's affirmance of the agreement. I understand that if the Court does not concur, I may persist in my plea of guilty and the disposition may be different than that contemplated by the plea agreement and that the Court may impose any sentence up to the maximum provided for the offense. Other than the plea agreement, no other promises have been made to me to cause me to [*sic*] this plea of guilty."

¶ 6 On March 13, 2015, the defendant filed a motion to withdraw his guilty plea, arguing that his trial counsel was ineffective in that counsel did not file the motions that he requested; that his counsel was ineffective in that counsel did not request a mental health evaluation for his mental illness; that the trial court coerced him into pleading guilty by offering him a furlough; and that the State did not make a reasonable effort to negotiate his case by "stonewalling" and "entrapping" him. That same day, counsel also filed a motion to withdraw as the defendant's counsel based on the ineffective assistance of counsel allegations.

¶ 7 On March 20, 2015, the trial court granted defense counsel leave to withdraw and appointed new counsel to represent him on his motion to withdraw his guilty plea. On July 7, 2015, the court entered a form order on the defendant's motion to withdraw his guilty plea. The form contained spaces where the court could indicate whether the motion was granted or denied, but neither of those spaces contained any markings or notations. However, the court's July 7 docket entry indicated that the motion was denied. There was no hearing on the motion to withdraw guilty plea.

¶ 8 On July 22, 2015, the defendant's post plea counsel filed a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014), which indicated that counsel had

consulted the defendant in person to ascertain his contentions of error, that counsel reviewed the trial court file and guilty plea and sentencing hearing transcript, and that counsel adopted the previously filed motion to withdraw the guilty plea, which adequately presented the defects in those proceedings. That same day, the defendant filed a notice of appeal with this court. On appeal, this court remanded the matter back to the trial court for compliance with Rule 604(d) because the trial court denied the defendant's motion to withdraw his guilty plea without a hearing. *People v. Godfrey*, No. 5-15-0298 (2017) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 9 On October 18, 2017, the defendant's post plea counsel filed a supplemental motion to withdraw the guilty plea, asserting that the defendant's guilty plea was not knowingly and intelligently made in that the trial court did not admonish him with respect to his rights under Illinois Supreme Court Rule 402(a) (eff. July 1, 2012). In particular, the motion argued that the court failed to orally admonish him regarding his right to a jury trial or a bench trial, his right to confront witnesses against him, and his right to plead not guilty or persist in a plea of not guilty. The motion asserted that he was prejudiced by the court's failure to comply with Rule 402(a) in that he would not have pled guilty if he had been properly admonished about his rights and that the court's failure to substantially comply with Rule 402(a) deprived him of due process. The defendant's post plea counsel also filed a certificate pursuant to Rule 604(d).

¶ 10 On November 1, 2017, a hearing was held on the defendant's motion to withdraw, and the defendant was the only witness. The defendant testified that he did not remember entering a guilty plea and did not know whether the trial court had admonished him about

his rights at the guilty plea hearing. The following exchange occurred between the defendant and his counsel:

"Q. Do you recall on the day that you pled guilty to *** the Judge admonishing you regarding your rights?

A. I didn't pay any attention. I don't know.

Q. Did he admonish you regarding your right to have a jury trial or bench trial?

A. I still can't remember.

Q. How about the right to confront or cross examine witnesses against you?

A. No.

Q. How about the right to plead guilty or not guilty, do you recall that?

A. It's been two years, almost three years, I can't recall.

Q. And how about being admonished regarding your right to persist in your plea of not guilty, do you recall being admonished as to that?

A. No.

Q. Mr. Godfrey, had you been so admonished, would you still have pled guilty?

A. No, I probably would have had a chance or wanted to go to trial with it if I would have known about it."

The defendant then testified that he wanted to proceed to trial but felt pressured to take the deal by his previous counsel. He also testified that he felt coerced into accepting the guilty plea by the court indicating that he might be given a furlough.

¶ 11 On cross-examination, the defendant reiterated that he did not remember whether the trial court had admonished him as to his rights. He acknowledged that he signed the guilty plea form but maintained that he was pressured by his attorney to sign it. He also asserted that he did not read the full document before signing it. He testified that he would not have signed the document if his attorney had read it to him. After the State finished its questioning, the court asked the defendant whether he had any problems reading or understanding the English language. The defendant responded as follows: "I

can't read big words. It's hard for me regarding big words, understanding them. I can probably talk to a person, but I can't read it the way I want because I need assistance." He further explained that he was not well at the time of the guilty plea hearing, that he was only thinking about his family, and that he was being pressured to take the deal. He claimed that he did not understand the guilty plea form at the time that he signed it because his counsel did not read it to him.

¶ 12 After hearing the defendant's testimony and the arguments of counsel, the trial court stated as follows:

"Let me start by saying we have a transcript of the plea hearing that occurred on February 17, 2015 in this case. I think one has to look at the tone and tenor of that entire hearing in addition to the actual words that were spoken at that hearing. Is it an ideal hearing that should be used as an example and a model [for] education purposes? Absolutely not. On the other hand, it was a 402 conference that was requested by the defendant with regard to this case, and as a result of the 402 conference a plea was entered with regard to this case. And I think the whole tone and tenor needs to be considered when reviewing what we have here."

¶ 13 The trial court then concluded that it had complied with Rule 402(a) with respect to admonishing the defendant. In making this decision, the court determined that it had personally addressed him in court during the guilty plea hearing and made sure that he understood the nature of the allegations and the possible penalties as required by Rule 402(a). As for the remaining Rule 402(a) admonishments, the court stated as follows:

"Now, the problematic area comes where the Court must determine that the defendant understood that he had the right to plead not guilty and persist in his plea of not guilty or to plead guilty. Well, we turn to Page 11 of that transcript. And beginning at Line 16 of the transcript the Court states to the defendant, 'I'm going to show you a plea of guilty form,' and asked the defendant if he read that form. On Line 18 the defendant indicates that he did read the form. On Line 19 the Court asked the defendant if he understood what he read. The defendant stated that yes, he did understand what he read. The Court on Line 21 asked the

defendant if he had any questions about that form. The defendant answered no, he did not have any questions about that form. On line 23 the Court asked, 'Is that what you want to do, enter a plea of guilty?' The unequivocal response is found on Page 12, Line 1, 'Yes, I do.'

Now, the form which the Court was using was referred to earlier by [the State] during his questioning, and that form is a plea of guilty form that was filed on February 17 in this case which [the defendant] has already indicated that he signed. In clear and unmistakable language it says in the middle paragraph, 'I understand that by pleading guilty I am giving up my right to trial including my right to a jury trial. I am also giving up my right to confront witnesses and subpoena witnesses on my behalf. I understand the nature of the offense and the possible penalties. I understand that if I plead guilty, the Court may sentence me up to the maximum penalty provided for this offense without hearing witnesses or having a trial. No threats have been made to me to get me to plead guilty.'

If there was any misunderstanding with regard to that language, [the defendant] did not indicate to this Court during the colloquy between the Court and [the defendant] during the plea of guilty process. That also covers the Paragraph A4 of 402 which goes on to require that the defendant be advised and knowledgeable of the fact that there will not be any trial of any kind by pleading guilty. There is no doubt that the words were not spoken by the Court in direct reading of that plea of guilty form to the defendant during the process of the plea of guilty. However, using the language of Rule 402A, the Court clearly made a determination that the defendant in this case understood what was being done in the case, *** and that it was his voluntary act that those things were being done including the plea of guilty, the giving up his right to a jury trial, and the fact that he was pleading guilty with regard to this particular offense. To allege that he was pressured into this and he was pounded on by his attorney, the transcript clearly shows something different."

¶ 14 Thus, the trial court denied the defendant's motion to withdraw his guilty plea. The defendant appeals.

¶ 15 On appeal, the defendant argues that the trial court erred in denying his motion to withdraw his guilty plea because it was not knowing or voluntary. The decision to grant or deny a defendant's motion to withdraw guilty plea is a matter within the discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion.

People v. Sharifpour, 402 Ill. App. 3d 100, 111 (2010). An abuse of discretion occurs where the trial court's ruling is arbitrary, fanciful, unreasonable, or no reasonable person would take the position adopted by the trial court. *Id.* A defendant does not have an automatic right to withdraw his guilty plea. *People v. Hughes*, 2012 IL 112817, ¶ 32. Rather, a defendant should be allowed to withdraw his guilty plea if doing so would correct a manifest injustice under the facts involved. *Id.* A guilty plea may be withdrawn where it was entered through a misapprehension of the facts or law, or there is doubt as to the guilt of the accused and justice would be better served by conducting a trial. *People v. Delvillar*, 235 Ill. 2d 507, 520 (2009).

¶ 16 To satisfy due process, a guilty plea must be affirmatively shown to have been made voluntarily and intelligently. *People v. Burt*, 168 Ill. 2d 49, 64 (1995). Illinois Supreme Court Rule 402, which was adopted to ensure that these due-process requirements are satisfied, instructs the trial court to provide the following admonishments before accepting a guilty plea:

"The court shall not accept a plea of guilty or a stipulation that the evidence is sufficient 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; or that by stipulating the evidence is sufficient to convict, he or she waives the right to

a trial by jury and the right to be confronted with any witnesses against him or her who have not testified." Ill. S. Ct. R. 402(a) (eff. July 1, 2012).

¶ 17 The Rule 402 admonishments are designed to ensure that a defendant understands his plea, the rights he waives by pleading guilty, and the consequences of a guilty plea. *Sharifpour*, 402 Ill. App. 3d at 114. However, the failure to properly admonish a defendant, standing alone, does not automatically establish grounds for reversing the judgment or vacating the plea. *Id.* "Substantial, not literal, compliance with Rule 402 is all that is required." *Id.* This means that, although the trial court did not recite to defendant, and ask if he understood, all of the components of Rule 402(a), the record nevertheless affirmatively and specifically shows that defendant understood them. *People v. Dougherty*, 394 Ill. App. 3d 134, 138 (2009). Substantial compliance has been found where the record indicates that a defendant understandingly and voluntarily entered into his plea, even if the trial court failed to admonish him as to a specific provision. *Id.* The determination of whether reversal is required depends on whether real justice has been denied or whether defendant has been prejudiced by the inadequate admonishments. *Sharifpour*, 402 Ill. App. 3d at 114. In reviewing the Rule 402 admonishments, the court may consider the entire record when determining whether a defendant voluntarily pled guilty. *Dougherty*, 394 Ill. App. 3d at 139.

¶ 18 Here, the trial court failed to recite all of the Rule 402(a) admonishments to the defendant in open court; the court did not orally admonish the defendant as to his right to a jury or a bench trial, his right to confront witnesses, or his right to plead not guilty or persist in a not guilty plea. However, in court, the defendant signed a written guilty plea,

which contained most of the missing admonishments; the only admonishment not contained in the written document was the defendant's right to persist in his not guilty plea.

¶ 19 The defendant argues that the written admonishment is not a substitute for the absence of oral admonishments. He argues that, relying on his representation that he read the written form and understood it, without any accompanying oral admonishments, the trial court only knew that he understood his rights as he interpreted the form, not whether he understood his rights as they are enumerated in Rule 402(a). In support, he relies on *People v. Cummings*, 7 Ill. App. 3d 306 (1972). In *Cummings*, the appellate court found that the oral Rule 402 admonishments were so lacking that the written form was offered as an almost-complete substitute. *Id.* at 308; *People v. Dominguez*, 2012 IL 111336,

¶ 29. The admonishments were defective because the trial court failed to advise defendant regarding the nature of the charges, his right against self-incrimination, and his right to confront witnesses. *Cummings*, 7 Ill. App. 3d at 307-08. The court also failed to determine the factual basis for the guilty plea. *Id.* at 308. Although the record contained a signed, printed plea of guilty form, which served as an express waiver of the rights at issue, the appellate court concluded that the written form could not serve as a substitute for the duty of the trial judge to personally address defendant in open court. *Id.*

¶ 20 The State here agrees that the written guilty plea form cannot serve as a substitution for improper oral admonishments; however, the State argues that the written form here is not a substitution but instead a supplement to complement the oral admonishments given in open court. The State relies on *People v. Dougherty*, 394 Ill.

App. 3d 134 (2009), in support. In *Dougherty*, the appellate court addressed the issue of whether the trial court's oral admonishments, in combination with the written plea, substantially complied with Rule 402. *Id.* at 137. The appellate court found that the trial court failed to recite all of the admonishments to defendant in open court but determined that the court had substantially complied with the provisions of Rule 402. *Id.* at 138-39. In making this decision, the appellate court noted the following: that defendant stated in open court that he understood the plea agreement terms; that he was informed that by pleading guilty, he was waiving his right to a jury trial; that he was informed about the terms of the plea agreement; that he was informed about the maximum sentence for the charged offense; and that he indicated that he understood the consequences of the guilty plea and wished to plead guilty. *Id.* at 139.

¶ 21 Further, on the day of the guilty plea hearing, he signed a written guilty plea and waiver form, acknowledging that he read and understood the instrument, which indicated that he appeared in open court and was informed of the nature of the charge and understood the minimum and maximum penalty, he understood that by pleading guilty he was waiving certain rights, and he understood that he had 30 days to file a motion to withdraw his plea. *Id.* Thus, considering the oral admonishments together with the comprehensive written guilty plea, the court found substantial compliance with Rule 402. *Id.*

¶ 22 The State also cites *Dominguez*, an Illinois Supreme Court case, for the proposition that a written admonishment form can act as a supplement to complement oral admonishments given by the trial court in open court. *Dominguez*, 2012 IL 111336,

¶¶ 27, 35. There, our supreme court found that written admonishments cannot be completely substituted for the oral admonishments required under Illinois Supreme Court 605(c) (eff. Oct. 1, 2001), but they can serve to supplement or complement the oral admonishments where the written admonishments are acknowledged by the court, and the court ascertains that defendant is aware of the content of the admonishments and understands them. *Dominguez*, 2012 IL 111336, ¶ 27.

¶ 23 Here, the defendant was informed about the nature of the charge and that the sentencing range was 6 to 30 years' imprisonment because of the Class X enhancement. He was also informed that it was not a probationable offense and that it carried with it three years of MSR and a fine of up to \$25,000. In the written plea, he was informed that he was giving up his right to a bench or a jury trial, that he was giving up his right to confront witnesses, and that he was entering into a negotiated plea with a specified sentence. The written plea also indicated that no threats had been made to induce him to plead guilty. The defendant signed the written plea, acknowledging that he read and understood the instrument. During the guilty plea hearing, the court showed him the written plea, questioned him as to whether he had read it, which he answered in the affirmative, and asked him whether he had any questions about the plea, which he answered in the negative. Also on the written form, the defendant's counsel certified that he had fully explained and answered all of the defendant's questions concerning the guilty plea. Moreover, the prosecution gave a thorough factual basis. Although the defendant was not informed that he had a right to persist in his plea of not guilty, he knew that he had a right to plead not guilty as he had already done so. Thus, the only admonishment

not covered by the oral and written admonishments was his right to persist in his plea of not guilty.

¶ 24 Because the defendant was not admonished about his right to persist in a plea of not guilty, he contends that he could not have understood all of his Rule 402 rights where the written guilty plea form did not contain all of his rights. Thus, he argues that the court did not substantially comply with Rule 402(a). He relies on *People v. Wise*, 26 Ill. App. 3d 158 (1975). There, the court found that the failure to admonish a defendant regarding the right to plead not guilty was fatal when accompanied by other violations of Rule 402. *Id.* at 161. The court concluded that the record revealed an "almost wholesale disregard of the requirements of Rule 402 at the conviction proceeding" in that the trial judge did not determine whether any force or threats were used to induce the guilty plea and did not admonish defendant of his right to plead not guilty, of his right to confront witnesses, or of his right to a jury trial. *Id.* Under these circumstances, the court concluded that the mere signing of a printed form waiving the rights at issue was not sufficient, by itself, to indicate that a waiver of those rights was understandingly made. *Id.* However, the court conceded that the signing of the printed form might be a *factor* in determining whether a waiver was understandingly made. *Id.*

¶ 25 In contrast, the appellate court in *People v. Pritchett*, 23 Ill. App. 3d 1084, 1086 (1974), concluded that the failure to admonish defendant as to right to persist in a plea of not guilty was not fatal. In that case, the trial court failed to admonish defendant as to his right to persist in a plea of not guilty and failed to inquire as to whether any force or threats were used to obtain the plea. *Id.* However, the trial court did admonish him of

the possible minimum and maximum sentences, of his right to a jury trial or a bench trial, and of his right to confront the witnesses against him, in addition to an explanation of the nature of the charge. *Id.* Based on this record, the appellate court found that there was nothing before it to indicate that defendant's plea was anything other than free and voluntary. *Id.* at 1087. Accordingly, the court found substantial compliance. *Id.*

¶ 26 Similarly, the appellate court in *People v. Reeves*, 25 Ill. App. 3d 674, 677 (1975), found substantial compliance where defendant was informed of his right to a jury trial, of his right to confront witnesses, of the minimum and maximum sentences that could be imposed, and where defendant had indicated that no threats or force induced his plea, even though he was not informed of his right to persist in a plea of not guilty.

¶ 27 Based on the record before us, we conclude that, although the best practice is for the trial court to admonish the defendant in open court at the time that it accepts the guilty plea, the oral admonishments given to the defendant at the guilty plea hearing were supplemented by the written plea; the written form was not a substitution. We also conclude that, even though the court did not admonish the defendant of his right to persist in a not guilty plea, considering the oral and written admonishments together, there was substantial compliance with Rule 402. Accordingly, we cannot find that the trial court abused its discretion in denying the defendant's motion to withdraw his guilty plea.

¶ 28 For the foregoing reasons the judgment of the circuit court of Jackson County is hereby affirmed.

¶ 29 Affirmed.