Nos. 2—10—0206, 2—10—0207, 2—10—0208, 2—10—0209, 2—10—0210, 2—10—0211 cons.
Order filed May 6, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL D. DANIELS, Defendant-Appellant.	)	Appeal from the Circuit Court of Du Page County. No. 07—CF—3254 Honorable John J. Kinsella, Judge, Presiding.

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL D. DANIELS, Defendant-Appellant.	)	Appeal from the Circuit Court of Du Page County. No. 07—CF—3255 Honorable John J. Kinsella, Judge, Presiding.

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,	)	Appeal from the Circuit Court of Du Page County.

v.	)	No. 07—CF—3257
	)	
MICHAEL D. DANIELS,	)	Honorable
	)	John J. Kinsella,
Defendant-Appellant.	)	Judge, Presiding.

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07—CF—3258
	)	
MICHAEL D. DANIELS,	)	Honorable
	)	John J. Kinsella,
Defendant-Appellant.	)	Judge, Presiding.

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07—CF—3259
	)	
MICHAEL D. DANIELS,	)	Honorable
	)	John J. Kinsella,
Defendant-Appellant.	)	Judge, Presiding.

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07—CF—3350
	)	
MICHAEL D. DANIELS,	)	Honorable
	)	John J. Kinsella,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: Defendant was entitled to summary remand where trial court failed to admonish defendant in accordance with Supreme Court Rule 605(c)), and defendant's sentence was not void where it fell within legally authorized sentencing range.

Defendant, Michael D. Daniels, was charged in six multi-count indictments with armed robbery (720 ILCS 5/18—2(a), (West 2006)), attempted armed robbery (720 ILCS 5/18—2(a), 8—4(a) (West 2006)), aggravated robbery (720 ILCS 5/18—5(a) (West 2006)), and attempted aggravated robbery (720 ILCS 5/18—5(a), 8—4(a) (West 2006)).

On November 16, 2009, defendant and the State told the court that they had a plea agreement. Defendant would plead guilty to one count of attempted armed robbery in case No. 07—CF—3254 and one count of aggravated robbery in each of the other five cases. The State told the court that each count to which defendant was pleading guilty was a Class 1 felony and that defendant, based on his conviction record, was eligible for extended- term Class 1 sentencing, making the sentencing range 4 to 30 years. The court asked the State about defendant's eligibility for consecutive sentences. The State responded that it had agreed to not recommend consecutive sentences, but that, statutorily, the court had the option of imposing them. Finally, the State said that, under the agreement, it was going to recommend the maximum extended-term sentence, 30 years, but that the agreement left defendant free to argue for less. The court accepted defendant's plea, calling it "open." It then checked the parties' understanding of the agreement again. It asked, "Are we agreeing not to recommend [consecutive sentences]?" and the State said, "That's correct."

At the sentencing hearing, while the State was arguing, the court again asked about the availability of consecutive sentences. The State responded that, although consecutive sentences were

an option, it was "not going to recommend that," and that it was "part of our agreement that it would be consecutive [*sic*]." The court sentenced defendant to concurrent 30-year terms in all six cases.

The court then admonished defendant of his rights regarding the plea agreement and appeal. It told him first that he was permitted to file a motion to withdraw the plea and that he could appeal a denial of such a motion. It next told him that he could move for reconsideration of the sentence and appeal after a denial:

> "You also have a right to file a motion to reconsider the sentence that's just been imposed. You must file that motion within 30 days. If the motion were granted, we entertain a new sentencing hearing. If the motion were denied, you'd have a right to appeal the sentence of this Court."

Defendant filed a motion to reconsider the sentence, which the court denied, and defendant, less than 30 days later, filed a notice of appeal.

On appeal, defendant moves for a summary remand because (1) the trial court did not strictly comply with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001), which sets out the advice that a court must give to a defendant after a sentence entered on a negotiated guilty plea; and (2) he appealed without having strictly complied with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). The State has responded. It asserts that, because it had agreed only to *not argue for* consecutive sentences, the plea was open, not negotiated, so that the court's advice was correct. It also asserts that the sentence is void because, given defendant's record, the law required that he be sentenced as a Class X offender. Under the rule in *People v. Diaz*, 192 Ill. 2d 211 (2000), defendant's plea was negotiated. Further, the sentence is not void. We therefore grant defendant's motion.

The *Diaz* court, considering whether a defendant had complied with Rule 604(d), stated that "if a plea agreement *limits or forecloses the State from arguing for a sentence from the full range of penalties available under law*, in order to challenge his sentence [by appeal], a defendant must first move to withdraw his plea in the trial court." (Emphasis added.) *Diaz*, 192 Ill. 2d at 225. In other words, all that the State needs to agree to for its agreement to count as a sentencing concession—and for the plea to be a negotiated plea, requiring admonishment under Rule 605(c)—is to promise *not to argue for* a particular available sentence. Here, the agreement unambiguously called for the State to refrain from arguing for consecutive sentences. This was thus a sentencing concession. Therefore, defendant's moving to withdraw the plea was a precondition to any appeal and the court should have so advised defendant under Rule 605(c).

Both Rule 605(c) and Rule 604(d) require strict compliance. *In re William M.*, 206 Ill. 2d 595, 605 (2003); *People v. Dunn*, 342 Ill. App. 3d 872, 881 (2003). Here, the court told defendant that, to appeal his sentence, he could file a motion to reconsider the sentence, rather than that he needed to file a motion to withdraw his plea. Therefore, the trial court did not admonish defendant in strict compliance with Rule 605(c). Defendant appealed, having filed only a motion to reconsider his sentence, as the court advised him that he could, and not a motion to withdraw his plea, as required by Rule 604(d). We thus must remand the cause for strict compliance with both rules. See *People v. Lloyd*, 338 Ill. App. 3d 379, 385-86 (2003).

The State asserts that defendant's sentence is void because, based on his prior convictions and under section 5—5—3(c)(8) of the Unified Code of Corrections (730 ILCS 5/5—5—3(c)(8) (West 2006)), he should have been sentenced as a Class X offender. This contradicts what the State told the trial court when the court inquired. The State said that it had looked "closely" at the issue of

whether defendant was subject to Class X sentencing and had concluded that one of the potential predicate offenses occurred too early. Regardless of whether the law required Class X sentencing, because defendant received a sentence permitted by both the extended Class 1 (see 730 ILCS 5/5—8—2(a)(3) (West 2006)) and Class X (730 ILCS 5/5—8—1(a)(3) (West 2006)) statutes, his sentence could not be void. A sentence is void only to the extent that it is outside what the law permits. *People v. Brown*, 225 Ill. 2d 188, 205 (2007). Even if defendant was subject to Class X sentencing, his sentence was within what the law permits. As we are required to remand the matter, any error in the wording of the mittimus can be corrected in the trial court, where the parties can better confirm when the potential predicate offenses occurred.

Accordingly, we remand the cause with the following directions. The trial court shall admonish defendant in strict compliance with Rule 605(c). If defendant so chooses, he may, within 30 days thereafter, file a motion to withdraw his plea. If he files such a motion, the trial court shall proceed pursuant to Rule 604(d). See Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Further, and in any event, the State may move to correct the mittimus.

This cause is remanded with directions to the circuit court of Du Page County.

Remanded with directions.