

**ILLINOIS OFFICIAL REPORTS**  
**Appellate Court**

***People v. Jones, 2013 IL App (4th) 120300***

Appellate Court                    THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v.  
Caption                                ERIN K. JONES, Defendant-Appellant.

District & No.                    Fourth District  
                                              Docket No. 4-12-0300

Rule 23 Order filed                June 27, 2013  
Rule 23 Order  
withdrawn                            July 26, 2013  
Opinion filed                        July 26, 2013

Held                                    Defendant's appeal from her *pro se* negotiated guilty plea to domestic  
*(Note: This syllabus constitutes no part of the opinion of the court battery was remanded to the trial court with directions for a proper  
but has been prepared by the Reporter of Decisions for the admonishment pursuant to Supreme Court Rule 605(c) and an  
convenience of the reader.)* opportunity to file a motion to withdraw her guilty plea, since, even  
though a written admonishment was included in the plea agreement,  
*Dominguez* requires a verbal admonishment.

Decision Under                    Appeal from the Circuit Court of Logan County, No. 12-CM-85; the Hon.  
Review                                Thomas W. Funk, Judge, presiding.

Judgment                            Remanded with directions.

Counsel on Appeal Michael J. Pelletier, Karen Munoz, and Nancy L. Vincent (argued), all of State Appellate Defender’s Office, of Springfield, for appellant.

Jonathan Wright, State’s Attorney, of Lincoln (Patrick Delfino, Robert J. Biderman, and Denise M. Ambrose (argued), all of State’s Attorneys Appellate Prosecutor’s Office, of counsel), for the People.

Panel JUSTICE POPE delivered the judgment of the court, with opinion. Presiding Justice Steigmann and Justice Turner concurred in the judgment and opinion.

### OPINION

¶ 1 On March 15, 2012, defendant, Erin K. Jones, *pro se*, entered a negotiated guilty plea to one count of domestic battery, a Class A misdemeanor (720 ILCS 5/12-3.2(a)(1) (West 2010)). Defendant appeals, arguing (1) the trial court failed to properly admonish her pursuant to Illinois Supreme Court Rule 605 (eff. Oct. 1, 2001) and (2) her waiver of trial counsel was ineffective because the record does not demonstrate compliance with Illinois Supreme Court Rule 401 (eff. July 1, 1984). We remand with directions.

¶ 2 I. BACKGROUND

¶ 3 On March 15, 2012, the State charged defendant by information with one count of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2010)), alleging defendant knowingly caused bodily harm to Shad J. Richards, a family or household member, by punching Richards’s face. That same day, defendant and the State entered into a fully negotiated plea agreement. Defendant proceeded *pro se*.

¶ 4 According to the written, fully negotiated plea agreement, defendant agreed to plead guilty to the domestic battery charge in exchange for 24 months’ probation and a period of incarceration in the Logan County jail. The trial court entered its judgment and sentence and certificate of conditions, finding defendant guilty of domestic battery. The court sentenced defendant to 24 months’ probation with various fines and fees. The court also entered an order of imprisonment, sentencing defendant to serve 60 days in the Logan County jail. The court stayed defendant’s jail time until March 12, 2013.

¶ 5 The record contains three docket entries dated March 15, 2012. The first states:  
“State by SA McIntosh.  
Deft appears. Guilty plea tendered. Deft duly admonished re: Nature of charge & min/max penalty; Not guilty/proof beyond reasonable doubt; Right to attorney, appointed

if indigent; Right to jury/confront witnesses, testify.

COURT FINDS: understanding & voluntary waivers, factual basis, Deft found guilty.

Fined \$ -0- plus costs, placed on 24 months PROBATION.

Bond to be released upon payment of fine & costs. Deft admonished re: Appellate rights.”

The second docket entry states:

“Fully Negotiated Plea Agreement, Waiver and Entry of Plea of Guilty and/or Admission of Petition to Revoke filed.

Judgment and Sentence and Certificate of Conditions filed. Copy to Probation.

Order of Imprisonment filed. Copy to Probation and Logan County Jail.

Sheriff’s Transportation Slip filed. Sh Fee \$25.00”

The third docket entry states “A/R added with total of \$804.00.”

¶ 6

Defendant filed her notice of appeal on March 30, 2012. On January 9, 2013, the trial court filed a certified report of proceedings. The court noted the matter was before it on its own motion for the preparation of an Illinois Supreme Court Rule 323(c) (eff. Sept. 23, 1996) bystander’s report. The court noted it had given the parties leave to submit affidavits regarding the proceedings held on March 15, 2012. After reviewing the affidavits submitted by the parties and noting no objections, the court found the affidavits “accurately represent the recollections of the Defendant and the State’s Attorney of the proceedings that occurred before the Court on March 15, 2012.” The court noted it supplemented the affidavits with its own memory of the proceedings and noted, in pertinent part, the following:

“2. There was no written or electronic recording of the hearing;

\* \* \*

5. That neither of the parties present nor the Court has specific recollection of whether the Court advised the Defendant that she had a right to a trial either by court or jury; that the entry of a guilty plea would result in a waiver of her right to a jury trial; that she had the right to confront and cross-examine the witnesses against her and that she had the right to have an attorney, including one that would be appointed for her if she could not afford one. However, the docket entries for the case, which are made contemporaneously with the proceedings by the Court itself, reflect that these admonitions occurred, and the Court is in the regular habit of giving all of these admonitions to persons not represented by attorneys such as the Defendant;

\* \* \*

9. The Defendant was advised by the Court orally that she had the right to appeal the Judgment and Sentence of the Court, and that if she chose to do that she would need to file a notice of appeal within 30 days of the date she was in court. The Defendant specifically recalls that the Court did not verbally tell her that she had to file a Motion to Withdraw her plea within 30 days if she wanted to preserve her right to appeal. Neither the State’s Attorney nor the Court have specific recollections of whether or not this was done on this particular occasion[;] however, the docket entries made contemporaneously

with the events of the plea agreement indicate that the Defendant was admonished of her ‘Appellate rights’ and the State[’]s Attorney and the Court both recall that the Court was in the habit of advising unrepresented Defendant’s [*sic*] that if they chose to appeal after a plea agreement the Defendant would first need to file a Motion to Withdraw their plea and that they would have 30 days from the day of their plea to do that;

10. The Defendant specifically recalls that she was not told that if she was allowed to withdraw her plea that the judgment and sentence would be vacated and that a trial date would be set, nor did the Court advise her that she could get a copy of the transcript if she was indigent or that she could have counsel appointed to assist her in the preparation and filing of such motions. She further recalls the Court not advising her that if she did not include every issue in that motion she would waive the issues not included in the motion. The Court is not in the habit of advising Defendants of the fact orally, but this information is stated in Paragraph 9 of the Fully Negotiated Plea Agreement, Waiver and Entry of Plea of Guilty And/Or Admission of Petition to Revoke that was signed by the Defendant and presented to the Court at the times of the plea;

11. The Court did not address the contents of the Fully Negotiated Plea Agreement, Waiver and Entry of Plea of Guilty And/Or Admission of Petition to Revoke with the Defendant, nor did the Court call the Defendant[’]s attention to any particular paragraph of this Agreement. The Court did not ask the Defendant if she understood the contents of the agreement.”

On March 1, 2013, this court allowed defendant’s motion to supplement the record with the certified report of proceedings.

¶ 7

## II. ANALYSIS

¶ 8

### A. Rule 605(c) Admonishments

¶ 9

Defendant first argues the trial court failed to strictly comply with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001) and she was affirmatively misled as to how to appeal her conviction. Defendant argues we must remand this case to the trial court for new postplea proceedings so the court can comply with Rule 605(c). Rule 605(c) states:

“(c) On Judgment and Sentence Entered on a Negotiated Plea of Guilty. 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.

For the purposes of this rule, a negotiated plea 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.”

¶ 10 As previously stated, the record does not contain a transcript of the trial court's postplea admonishments. In the certified report of proceedings, the court noted it specifically recalled telling defendant she had 30 days from the date of sentencing to file a notice of appeal. However, the court did not independently recall whether it verbally admonished defendant of the requirements of Rule 605(c).

¶ 11 In *People v. Foster*, 171 Ill. 2d 469, 471, 665 N.E.2d 823, 824 (1996), our supreme court stated appellate courts may not consider allegations of error regarding either a guilty plea or a corresponding sentence unless the defendant first filed a written motion to withdraw his guilty plea or a motion to reconsider sentence in the trial court. If the defendant does not file a written motion, the appellate court must dismiss the appeal. *Foster*, 171 Ill. 2d at 471, 665 N.E.2d at 824. In *Foster*, the trial court failed to admonish defendant pursuant to Rule 605(b) he was required to file a written motion to either withdraw his guilty plea or reconsider the sentence imposed. *Foster*, 171 Ill. 2d at 470, 665 N.E.2d at 824. The supreme court noted: “Rule 605(b) serves to ensure, *inter alia*, that a defendant knows of Rule 604(d)'s requirements regarding appeals from sentences imposed upon a plea of guilty. Where such admonitions have not been issued, it would violate procedural due process rights to hold a defendant responsible for noncompliance with the strictures of Rule 604(d). Accordingly, we hold that where a trial court has failed to issue Rule 605(b) admonitions, the appellate court may entertain an appeal from a sentence despite defendant's noncompliance with the written-motion requirement of Rule 604(d).” *Foster*, 171 Ill. 2d at 473, 665 N.E.2d at 825.

However, the supreme court then stated appellate courts could not rule on the merits of the appeal but must remand the case to the trial court for strict compliance with Rule 604(d). *Foster*, 171 Ill. 2d at 474, 665 N.E.2d at 826.

¶ 12 In *People v. Dominguez*, 2012 IL 111336, ¶ 11, 976 N.E.2d 983, our supreme court stated “based on the plain meaning of Rule 605(c), the rule must be strictly complied with in that the admonitions must be given to a defendant who has pled guilty.” The court noted failure to admonish a defendant pursuant to Rule 605(c) requires remand to the trial court for proper admonishments to be given. *Dominguez*, 2012 IL 111336, ¶ 11, 976 N.E.2d 983. However, the supreme court held a verbatim reading of the rule is not required as long as the defendant is substantially advised of the actual content of Rule 605(c). *Dominguez*, 2012 IL 111336,

¶ 11, 976 N.E.2d 983.

¶ 13 As a result, the real question in this case becomes whether defendant was substantially advised of the actual content of Rule 605(c). The “Fully Negotiated Plea Agreement, Waiver and Entry of Plea of Guilty and/or Admission of Petition to Revoke,” which defendant signed, provided defendant with the admonishments required by Rule 605(c). However, the supreme court has made clear written admonishments, on their own, are not sufficient to comply with Rule 605(c). According to the court:

“Under Rule 605(c), ‘the trial court shall advise the defendant,’ which means there must be some colloquy in open court between the court and a defendant. Written admonishments may not completely be substituted for the absence of oral admonishments. However, where written admonishments are acknowledged by the court in open court, and the court ascertains that the defendant is aware of the content of the admonishments and understands them, they may be considered. They can serve to supplement or complement the oral admonishments required under the rule. The written admonishments by themselves are not adequate. However, in a situation where, as here, there is argument over the completeness, or whether the oral admonishments imparted the substance of Rule 605(c) to a defendant, written admonishments, provided the court has discussed them in open court with defendant, may inform the court’s analysis of whether a defendant has been substantially advised under Rule 605.” *Dominguez*, 2012 IL 111336, ¶ 27, 976 N.E.2d 983.

¶ 14 The trial court acknowledged in the certified report of proceedings it “did not address the contents of the Fully Negotiated Plea Agreement, Waiver and Entry of Plea of Guilty And/Or Admission of Petition to Revoke with the Defendant, nor did the Court call the Defendant[’]s attention to any particular paragraph of the Agreement.” Further, “[t]he Court did not ask the Defendant if she understood the contents of the agreement.” As a result, pursuant to *Dominguez*, we cannot allow the written plea agreement to inform our analysis of whether defendant was substantially advised under Rule 605.

¶ 15 According to the certified report of proceedings:

“The Defendant was advised by the Court orally that she had the right to appeal the Judgment and Sentence of the Court, and that *if she chose to do that she would need to file a notice of appeal within 30 days of the date she was in court*. The Defendant specifically recalls that the Court did not verbally tell her that she had to file a Motion to Withdraw her plea within 30 days if she wanted to preserve her right to appeal. Neither the State’s Attorney nor the Court have specific recollections of whether or not this was done on this particular occasion, however, the docket entries made contemporaneously with the events of the plea agreement indicate that the Defendant was admonished of her ‘Appellate rights’ and the State’s Attorney and the Court both recall that the Court was in the habit of advising unrepresented Defendant’s *[sic]* that if they chose to appeal after a plea agreement the Defendant would first need to file a Motion to Withdraw their plea and that they would have 30 days from the day of their plea to do that[.]” (Emphasis added.)

The docket entry referenced by the trial court does not clearly establish defendant was

admonished pursuant to Rule 605(c). Considering the court specifically recalled verbally admonishing defendant she would need to file a “notice of appeal within 30 days of the date she was in court,” the docket entry could easily be referring to that admonishment.

¶ 16 The defendant, who was proceeding *pro se*, stated the trial court did not tell her she would need to file a motion to withdraw her guilty plea within 30 days if she wanted to preserve her right to appeal. Neither the court nor the State could specifically recall whether the court verbally admonished defendant of this requirement. However, according to the certified report of proceedings, both the court and the State’s Attorney stated “the Court was in the habit of advising unrepresented Defendant’s [*sic*] that if they chose to appeal after a plea agreement the Defendant would first need to file a Motion to Withdraw their plea and that they would have 30 days from the day of their plea to do that.”

¶ 17 Assuming *arguendo* the trial court told defendant she needed to file a motion to withdraw her guilty plea, as the court stated it was in the habit of doing, the court provided the defendant with explicitly contradictory admonitions. The court noted it orally advised defendant “she had the right to appeal the Judgment and Sentence of the Court and, that if she chose to do [so] that she would need to file a notice of appeal within 30 days of the date she was in court.” This is exactly what defendant did.

¶ 18 Defendant’s procedural due process rights would be violated if we dismissed her appeal when she followed the instructions of the trial court. As a result, we must remand this case for the trial court to properly admonish defendant pursuant to Rule 605(c) and give defendant an opportunity to file a motion to withdraw her guilty plea if she so chooses.

¶ 19 B. Illinois Supreme Court Rule 401

¶ 20 Defendant also argues her waiver of counsel was not effective because (1) the record does not affirmatively demonstrate compliance with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984) and (2) no verbatim transcript of the waiver of counsel exists as required by Rule 401(b).

¶ 21 Because defendant did not file a motion to withdraw her guilty plea, we will not address this argument. Because we are remanding this case for the trial court to properly admonish defendant pursuant to Rule 605(c), defendant can raise this issue if she chooses to file a motion to withdraw her guilty plea.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we remand this case and direct the trial court to properly admonish defendant pursuant to Illinois Supreme Court Rule 605(c) and to allow defendant to file a motion to withdraw her guilty plea if she so chooses.

¶ 24 Remanded with directions.