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FIRST DIVISION
FILED: DECEMBER 27, 2011

No. 1-10-0711

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 6544
)	
TENNILE TYSON,)	Honorable
)	Arthur F. Hill, Jr.,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

Held: The defendant's appeal is dismissed because she failed to file a motion to withdraw her guilty plea before appealing.

¶ 1 The defendant, Tennile Tyson, appeals from her conviction and sentence following her negotiated guilty plea to the charge of first degree murder. On appeal, the defendant argues that we should remand her case for the appointment of counsel and an opportunity to withdraw her guilty plea, because we should construe Supreme Court Rule 604(d) (eff. July 1, 2006) and the sixth amendment as having required such an appointment at the time she filed her *pro se* notice of appeal. She also argues that we should construe Supreme Court Rule 606(a) (eff. March 20, 2009) as requiring appointment of counsel in her case. For the reasons that follow, we dismiss the defendant's appeal.

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¶ 2 The defendant entered into a negotiated guilty plea to the charge of first-degree murder. Under the terms of the agreement, she pled guilty to the charge, and the State recommended a 25-year prison sentence. On January 15, 2010, the circuit court accepted her guilty plea and imposed a 25-year sentence. In so doing, the circuit court judge admonished the defendant as is required pursuant to Supreme Court Rule 605(b) (eff. October 1, 2001). Those admonishments included the following:

"You have the right to appeal everything about this case. If you want to appeal something, there's something you have to do first and that is you have to file a motion seeking permission to vacate or take back the guilty plea that you just gave. The motion would have to be in writing and list every single reason why I should allow you to take back your guilty plea. *** If you didn't file that motion within 30 days of today's date, you would waive or give up forever your ability to be able to take back your guilty plea."

The judge further advised the defendant of the consequences of her succeeding or failing on a motion to withdraw her guilty plea, and the procedures for appealing afterward. The defendant indicated that she understood the judge's admonishments.

¶ 4 On February 9, 2010, the defendant filed a notice of appeal from her conviction. She did not file a motion to withdraw her guilty plea.

¶ 5 Supreme Court Rule 604(d) (eff. July 1, 2006) provides that "[n]o appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence *** or *** a motion to withdraw the plea of guilty and vacate the judgment." Where a defendant has pled guilty and then has filed a notice of appeal without first filing a motion to withdraw the guilty plea, we must normally dismiss the appeal. See *People v. Flowers*, 208 Ill. 2d 291, 301, 802 N.E.2d 1174 (2004).

¶ 6 The defendant does not dispute that she failed to satisfy the well-settled procedural prerequisites for a valid appeal following her guilty plea. She argues, however, that her case should be treated differently because she was without counsel when she failed to move to withdraw her

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plea. In her view, when a defendant files a notice of appeal (and thereby indicates a desire to challenge her conviction) following a guilty plea, the sixth amendment mandates that counsel be appointed to guide her through the procedural requirements for post-plea proceedings. Thus, according to the defendant, we should remand her case with instructions that counsel be appointed for further post-plea proceedings. We disagree.

¶ 7 The sixth amendment provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right *** to have the Assistance of Counsel for his defence." U.S. Const. amend VI. This provision, "safeguards to an accused who faces incarceration the right to counsel at all critical stages of the criminal process." *Iowa v. Tovar*, 541 U.S. 77, 80 (2004). This sixth amendment right to counsel attaches at the commencement of criminal proceedings. See *Kirby v. Illinois*, 406 U.S. 682, 688-89 (1972)). The constitutional right to counsel, whether conferred by the sixth amendment or the due process and equal protection clauses of the fourteenth amendment, continues during the direct appeal process. See *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 436 (1988) ("If a convicted defendant elects to appeal, he retains the Sixth Amendment right to representation by competent counsel"); but see 3 W. LaFave, *Criminal Procedure* 624-26 (3d ed. 2007) (stating that the Supreme Court has "clearly indicated that [the sixth amendment right to counsel] has ended where the defendant is pursuing an appeal from his conviction" and discussing the due process and equal protection guarantees of counsel on direct appeal). The constitutional right to counsel ends, however, once a defendant is no longer entitled to a direct appeal as of right. See *Ross v. Moffitt*, 417 U.S. 600 (1974) (holding that there is no constitutional right to counsel to seek discretionary review); *Pennsylvania v. Finley*, 481 U.S. 551 (1987) (holding that there is no constitutional right to counsel in collateral attacks on a conviction); *Murray v. Giarratano*, 492 U.S. 1 (1989) (same).

¶ 8 A guilty plea, however, interrupts the normal progression from trial to conviction to appeal. " 'A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.' " *People v. Williams*, 188 Ill. 2d 365, 370, 721 N.E.2d 539 (1999) (quoting *Boykin v. Alabama*, 395 U.S. 238,

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242 (1969)). By pleading guilty, a defendant "waives all nonjurisdictional defenses or defects." *People v. Burton*, 184 Ill. 2d 1, 27, 703 N.E.2d 49 (1998). More importantly for our purposes, Illinois law also provides that a defendant who pleads guilty relinquishes her right to appeal so long as the guilty plea remains extant. As we have noted, Rule 604(d), which is housed among the Supreme Court Rules delineating appellate procedure in criminal cases, states that "[n]o appeal from a judgment entered upon a plea of guilty shall be taken unless the defendant" moves to withdraw the plea. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Accordingly, under Illinois law, when a defendant is sentenced pursuant to a valid guilty plea and does not move to withdraw that plea, she has foregone her right to appeal. At that point, so long as the guilty plea remains extant, the criminal proceedings against her, and her accompanying constitutional right to counsel, are ended.

¶ 9 If a defendant opts to challenge her guilty plea, she will again enjoy the right to the assistance of counsel. See *United States v. Garrett*, 90 F.3d 210, 212 (7th Cir. 1996) (stating that the sixth amendment right to counsel applies at a hearing on a defendant's motion to withdraw guilty plea); *People v. Smith*, 365 Ill. App. 3d 356, 847 N.E.2d 865 (2006) (stating that the right to counsel on a motion to withdraw guilty plea is protected in Illinois via Rule 604(d)). Until a defendant takes the step of filing a motion to withdraw a guilty plea, however, her right to appeal remains waived, and the prosecution against her remains finalized. If the criminal case against a defendant has ended, then so too has the sixth amendment right to counsel.

¶ 10 The defendant's argument here does not directly dispute the above principles, but instead attempts to circumvent them by relying heavily on the idea that she actually evinced a desire to withdraw her guilty plea when she filed her otherwise timely notice of appeal. In the defendant's view, her notice of appeal constituted a "*pro se* document[] [filed] in the trial court indicating a desire to appeal and requesting appointment of counsel." Accordingly, she implies, the problem here amounts to her filing the wrong document to formalize her intent to withdraw her waiver of her appeal right. We disagree with this approach.

¶ 11 Under our supreme court's interpretations of Rule 604(d), we cannot accept the defendant's

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characterization of the problem as amounting only to a mistaken formality. In *People v. Brooks*, 233 Ill. 2d 146, 908 N.E.2d 32 (2009), the supreme court reiterated its position that a defendant must comply with Rule 604(d) in order to file an appeal following a guilty plea even if the defendant files a notice of appeal indicating an intent to challenge the guilty plea. In so doing, it criticized any "general rule that would excuse noncompliance with Rule 604(d) in every instance in which a defendant expresses a desire to appeal, and eliminate the need for" guilty plea admonitions altogether. *Brooks*, 233 Ill. 2d at 156. With this language, the supreme court indicated that it does not view as a mere formality the difference between a notice of appeal and a Rule 604(d) motion; indeed, it indicated that the strictures of Rule 604(d) must be followed even if a defendant evinces a desire to appeal by filing a notice of appeal. The supreme court's reasoning on this point is incompatible with the defendant's position that her notice of appeal should have been treated as a document demonstrating her intent to challenge her guilty plea.

¶ 12 For the above reasons, we reject the defendant's argument that, under the sixth amendment, a defendant who pleads guilty must be provided counsel following her guilty plea if she files a *pro se* notice of appeal from the guilty plea.

¶ 13 Aside from her above argument regarding Rule 604(d), the defendant also argues that Supreme Court Rule 606(a) (eff. Mach 20, 2009), which describes how a defendant may perfect an appeal, can be deemed constitutional only if we interpret it to require the appointment of counsel to help a defendant appeal after a guilty plea. However, for the reasons we explain above, we disagree with the defendant's position that the constitution requires the provision of counsel to a defendant who files a notice of appeal without first moving to withdraw her guilty plea. For those same reasons, we reject the defendant's argument that Rule 606(a) should be interpreted to require the appointment of counsel in her situation.

¶ 14 Because we reject the defendant's arguments regarding the constitutionality of Illinois' post-plea procedures for appointment of counsel, we have no reason to distinguish her case from any other case in which the defendant's appeal was dismissed because it was filed without the

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defendant's having first moved to withdraw her guilty plea pursuant to Rule 604(d). Our supreme court has held that, when our court encounters a case in that procedural posture, we must dismiss the appeal. See *Flowers*, 208 Ill. 2d 291. We must follow that holding here.

¶ 15 For the foregoing reasons, we dismiss the defendant's appeal.

¶ 16 Dismissed.