

No. 1-10-1400

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).

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. 10 CR 2109
)	
GREGORY SANDERS, SR.,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE STEELE delivered the judgment of the court.
Justices Neville and Salone concurred in the judgment.

ORDER

- ¶ 1 *Held:* This cause must be remanded for proper admonishments pursuant to Rule 605(c) (eff. Oct. 1, 2001), because defendant, who entered a negotiated plea, filed a timely motion to reconsider the sentence after being admonished by the trial court that he could file either a motion to withdraw the plea or a motion to reduce the sentence.
- ¶ 2 Defendant, Gregory Sanders, Sr., entered a negotiated guilty plea to escape in exchange for a three-year prison term. When admonishing him of his appellate rights, the trial court incorrectly told defendant he could preserve his right to appeal by filing either a motion to withdraw his plea or a motion to reduce the sentence. Defendant filed the latter motion, the trial

court denied it, and defendant has appealed, seeking remand for proper admonishments and the opportunity to file a new motion challenging his plea. We reverse and remand.

¶ 3 At a February 19, 2010, hearing, the parties informed the trial court that defendant had agreed to enter a plea of guilty to escape in exchange for a sentence of three years in prison. After informing defendant of the possible penalties associated with the charge and hearing a recitation of the factual basis for the charge, the trial court accepted the plea. The court then admonished defendant that he had certain appellate rights. In order to exercise those rights, the court further stated:

"within 30 days, you must file with this court a motion asking the court to either vacate your plea of guilty or to reconsider the court's sentence.

If you need an attorney to help you prepare that motion and you cannot afford one, the court would appoint one for you as well as give you a free transcript of everything that was said here today."

When the court asked defendant whether he understood these rights, defendant indicated that he did.

¶ 4 Within 30 days, on March 15, 2010, defendant placed a *pro se* motion seeking to reduce his sentence in the mail system at the Dixon Correctional Center. The motion was file-stamped by the clerk's office on March 23, 2010. On April 5, 2010, the trial court denied the motion, noting: (1) defendant had entered a negotiated plea; (2) the motion was untimely; and (3) defendant's sentence was only one year above the statutory minimum.

¶ 5 On appeal, defendant contends that the trial court did not comply with Rule 605(c)(2) because the court indicated he could file either a motion to vacate his plea or a motion to

reconsider his sentence when, because his plea was negotiated, the only permissible option was to file a motion to vacate the plea. See Rule 605(c)(2) (eff. Oct. 1, 2001). He also contends that the court failed to inform him that any issues not raised in his postplea motion would be waived.

¶ 6 Pursuant to Supreme Court Rule 604(d) (eff. July 1, 2006), before a defendant can appeal the judgment entered on a guilty plea, he must, within 30 days, file a motion challenging the plea. When the plea is negotiated, a defendant cannot challenge the sentence as excessive unless he files a motion to withdraw the plea and vacate the judgment within 30 days of sentencing. See Rule 604(d) (eff. July 1, 2006). The filing of a Rule 604(d) motion is a "condition precedent" to an appeal from the trial court's judgment on a guilty plea and generally, the failure to file a Rule 604(d) motion precludes this court from considering a defendant's appeal and results in its dismissal. *People v. Flowers*, 208 Ill. 2d 291, 300-01 (2003). However, under the admonition "exception," if the trial court fails to admonish a defendant properly pursuant to Rule 605 and that defendant then tries to appeal without first filing the motion required by Rule 604(d), the cause is remanded to the trial court for strict compliance with Rule 605. *Flowers*, 208 Ill. 2d at 301.

¶ 7 Initially, this court notes that defendant's *pro se* postplea motion was timely. Defendant entered a guilty plea on February 19, 2010, and placed his *pro se* motion to reconsider the sentence in the prison mail on March 15, 2010. Although the circuit court clerk's office did not file-stamp the motion until March 23, 2010, an incarcerated defendant's postplea motion is considered timely filed if he placed it in the prison mail system within the 30-day period, regardless of the date on which the clerk's office received the motion or file-stamped it. *People v. Tlatenchi*, 391 Ill. App. 3d 705, 710 (2009); see also *People v. Saunders*, 261 Ill. App. 3d 700,

704-05 (1994) (it would be unfair for an incarcerated defendant to bear the responsibility of any "erratic delays" in the prison mail system when that system is generally his only mailing option).

¶ 8 Here, the issue is whether the trial court complied with Illinois Supreme Court rules. Our review is *de novo*. *People v. Thompson*, 238 Ill. 2d 598, 606 (2010). The record shows that the trial court told defendant that in order to appeal, he could file either a motion to vacate his plea or a motion to reconsider the sentence within 30 days. However, because defendant had entered a negotiated plea, defendant was required to file, within 30 days of sentencing, a motion to withdraw his guilty plea rather than a motion to reconsider the sentence. See *People v. Linder*, 186 Ill. 2d 67, 74 (1999) (when a defendant agrees to plead guilty in exchange for a recommended sentencing cap, he must first file a motion to withdraw his guilty plea before he can challenge the sentence imposed). In this situation, the trial court was required to advise defendant that he had to file a motion to withdraw his plea in conjunction with any challenge to his sentence. The trial court's failure to properly admonish defendant requires remand for the purpose of receiving admonishments which strictly comply with Rule 605 and the opportunity to file a new postplea motion pursuant to Rule 604(d). *Flowers*, 208 Ill. 2d at 301.

¶ 9 Furthermore, our decision in *People v. Claudin*, 369 Ill. App. 3d 532 (2006), is instructive. In that case, the defendant contended that he was not properly admonished because the trial court indicated that in order to appeal, he first had to file a motion to withdraw the guilty plea, modify or reconsider the sentence when his plea was negotiated and his only option was to file a motion to vacate the plea. This court agreed with the defendant's assertion that he could not have preserved his appeal rights by only filing a motion to modify or reconsider his sentence and that the trial court's mention of that kind of motion when admonishing him was "extraneous and incorrect." *Claudin*, 369 Ill. App. 3d at 534. However, the admonishments in that case, when read in context, established that the trial court conveyed the substance of the rule by

putting the defendant on notice that he had to file a postplea motion within 30 days, the defendant told the court that he understood this requirement, and the defendant did not file a postplea motion. *Claudin*, 369 Ill. App. 3d at 534. In other words, while the admonishments did not strictly comply with Rule 605(c), they were sufficient to put the defendant on notice of the postplea action necessary to preserve his appeal, and he did nothing. *Claudin*, 369 Ill. App. 3d at 534.

¶ 10 Unlike the defendant in *Claudin* who ignored the court's instructions, defendant here filed one of the motions that the trial court instructed him was an avenue to appellate relief. However, as defendant's plea was negotiated, a motion to reconsider the sentence was not an avenue through which defendant could preserve his appellate rights. Consequently, defendant was precluded from perfecting his appeal because he followed the trial court's incorrect admonishments. *Cf. Claudin*, 369 Ill. App. 3d at 534. Thus, this cause must be remanded for strict compliance with Rule 605(c).

¶ 11 Accordingly, we remand this cause to the circuit court of Cook County to admonish defendant properly pursuant to Rule 605(c) within 30 days of the date our mandate is filed in the trial court so that defendant may have the opportunity to file a motion to withdraw his guilty plea pursuant to Rule 604(d), if he so wishes. If defendant is found to be indigent, the trial court shall appoint counsel to assist him. If defendant files a postplea motion and it is denied by the trial court, he may then appeal the denial of that motion.

¶ 12 Remanded with directions.