

No. 1-10-2213

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 C6 60639
)	
BILLY LOVE,)	Honorable
)	Brian K. Flaherty,
Defendant-Appellant.)	Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* Cause reversed and remanded for further proceedings where trial court failed to properly advise defendant of steps he must take to appeal from negotiated guilty plea.
- ¶ 2 Defendant Billy Love entered into a negotiated guilty plea to a Class 3 felony of retail theft and was sentenced to four years in prison. Defendant sought to challenge his sentence but that challenge was dismissed as untimely by the trial court. Defendant alleges that he is entitled to a remand for further proceedings because the trial court did not fully and properly instruct him on the steps he must take to appeal from the negotiated plea.

¶ 3 Defendant was arrested on April 22, 2010 and charged with retail theft for taking seven bottles of liquor exceeding \$150 in value from a Dominick's store without paying for them. At a court hearing on July 1, 2010, defendant's attorney informed the court that defendant wished to have a Rule 402 conference. Ill. S. Ct. R. 402 (eff. July 1, 1997). After that conference, defense counsel informed the court that defendant would plead guilty and accept the court's recommended sentence of four years in prison. The trial court advised defendant, pursuant to Rule 402, concerning the rights he was giving up, and determined that defendant was voluntarily pleading guilty.

¶ 4 The factual basis for defendant's plea established that on April 22, 2010, he entered a Dominick's store in Matteson, Illinois, took seven bottles of liquor from the liquor department, hid them under his shirt, and walked out of the store. A loss prevention officer apprehended defendant and brought him back into the store, where the officer recovered the seven bottles of liquor. However defendant raised one of those bottles against the officer and then fled the store. The Matteson police found defendant in a nearby McDonald's bathroom and brought him back to the Dominick's store, where the loss prevention officer positively identified defendant as the man who had taken the bottles of liquor. The value of the liquor was estimated at approximately \$299.

¶ 5 The trial court accepted defendant's guilty plea and sentenced him to four years in prison with one additional year of mandatory supervised release. The court then advised defendant of his appeal rights in the following manner:

"Sir, even though you have pled guilty, you have a right to an appeal. In order to appeal, you must within thirty days file with this court a written motion asking the Court to allow you to

withdraw your plea of guilty *or ask this Court to reconsider sentence.*

If you can't afford an attorney at that time because you're poor, one will be provided for you free of charge as well as a transcript of today's proceedings.

But, please understand, if you fail or forget to put in your petition the reasons why you want this Court to reconsider its sentence or why you want this Court to allow you to withdraw your plea of guilty, if you don't put those reasons in your motion, they will be waived and given up for all time."

[Emphasis added.]

Defendant indicated that he understood these rights and requirements. On July 21, 2010, he sent a letter to the clerk of the court informing it of his decision "to appeal the court decision to sentence me to (4) years I.D.O.C." Defendant cited as grounds the court's abuse of discretion. He also stated there would be claims of "ineffective counsel." Finally he stated that he wanted this documentation of his "notice to appeal sentence and ineffective counsel" to be filed in "compliance with the (30) day time frame given by the trial judge." The letter is time-stamped July 26 by the clerk of the court, so it was filed within 30 days of defendant's guilty plea on July 1.

¶ 6 Defendant subsequently filed a "motion to reconsider sentence" which was dated August 6, 2010, and file-stamped by the clerk of the court on August 13, 2010. On appeal defendant concedes that this document was not timely filed. But defendant contends that his letter of July 21, 2010, amounted to a timely attempt to appeal and, because the trial court erroneously

informed him that such a challenge was a proper means of appealing, the cause must be remanded for further proceedings.

¶ 7 Supreme Court Rule 605(c) (eff. Oct. 1, 2001) requires a trial court, upon the entry of a judgment upon a negotiated plea of guilty, to advise the defendant substantially as follows:

(1) the defendant has a right to appeal; (2) within thirty days of sentencing and prior to taking an appeal, the defendant must file a written motion to vacate judgment and withdraw the plea; (3) if the motion is allowed, a date will be set for trial on the charges to which the defendant pled guilty; (4) at the State's request, any charges dismissed pursuant to the plea agreement may be reinstated and set for trial; (5) if the defendant is indigent, a copy of the transcript of the proceedings will be provided without cost and counsel will be appointed to assist in the preparation of the motions; and (6) any issue not raised in the motion to vacate the judgment and withdraw the plea shall be deemed waived.

Legal issues are reviewed *de novo* (*People v. Breedlove*, 213 Ill. 2d 509, 512 (2004)) and that is the standard with which we review a trial court's compliance with Supreme Court Rule 605. Here it is clear that the trial court failed to comply with Rule 605(c) because it erroneously informed defendant that he could appeal if he asked the court to reconsider his sentence. In fact, the defendant was required to file a motion to vacate the judgment and withdraw his plea in order to appeal. When he failed to do so, the trial court dismissed his appeal as untimely. But defendant did exactly what the trial court instructed him he should do in order to appeal from his guilty plea; he filed a timely request that the court reconsider his sentence by means of the letter

he sent to the clerk of the court on July 21, 2010. That letter was clearly timely as it was time-stamped on July 26, 2010 by the clerk of the court.

¶ 8 This case is analogous to *People v. Jamison*, 181 Ill. 2d 24, 27 (1998) where the court failed to give any admonishments under Supreme Court Rule 605(b) and defendant, who had received the death penalty pursuant to a nonnegotiated plea, only challenged his sentence. Our supreme court ruled that the cause must be remanded for proper admonishments and for defendant to determine whether he wished to withdraw his guilty plea. *Jamison*, 181 Ill. 2d at 27. Also relevant as authority is *People v. Young*, 387 Ill. App. 3d 1126 (2009), where defendant entered into a negotiated guilty plea but was admonished, in accord with the requirements for a nonnegotiated plea, that to appeal he must first either move to reconsider his sentence or move to have the judgment vacated and obtain leave to withdraw his guilty plea. *Young*, 387 Ill. App. 3d at 1128. Defendant only filed a motion to reconsider his sentence, and this court held that the cause must be remanded for proper admonitions under Rule 605(c) and for the filing of new postsentencing motions. *Young*, 387 Ill. App. 3d at 1128; see *People v. Lloyd*, 338 Ill. App. 3d 379, 385-86 (2003) (where trial court failed to admonish the defendant of his right to appointed counsel if indigent and the defendant failed to file a motion to withdraw his plea in the trial court, reviewing court reversed and remanded for proper admonitions and to allow the defendant to file an appropriate postplea motion); *People v. Gougisha*, 347 Ill. App. 3d 158, 162-63 (2004) (where, pursuant to a negotiated guilty plea, the trial court failed to advise the defendant of her right to an appeal or of the requirement that she first file a motion with the trial court seeking to have the judgment vacated and also failed to advise the defendant of the potential consequences of withdrawing her plea, the defendant's failure to file a motion to withdraw her plea in the trial court was excused and the cause remanded for proper admonitions in accordance with Rule 605(c) and for the defendant to have an opportunity to file a motion to withdraw her guilty plea).

¶ 9 The State seeks to shift the focus of this appeal to defendant's untimely motion to reconsider sentence. We conclude that the relevant document is defendant's timely-filed letter of July 21, 2010, in which defendant challenged his sentence, exactly as the trial court had instructed him he must in order to preserve his appeal rights. This case differs, then, from *People v. Claudin*, 369 Ill. App. 3d 532, 534-35, cited by the State, where the reviewing court found substantial compliance with Rule 605(c) in the trial court's admonishment that "[i]n order to [appeal] you must first file a motion to withdraw your plea of guilty, modify or reconsider the sentence." The court found that this was an erroneous but insubstantial misstatement of Rule 605(c) where the defendant failed to file any post-trial motion. This case is also distinguishable from another case cited by the State, *People v. Crump*, 344 Ill. App. 3d 558 (2003). In *Crump*, the defendant did not file any timely post-trial motion and under those circumstances the reviewing court held that defendant was not prejudiced by the trial court's failure to advise the defendant that any issues not raised in such a motion would be waived or that charges dismissed pursuant to his plea bargain could be reinstated. *Crump*, 344 Ill. App. 3d at 562-63. Here, defendant did file a timely post-trial motion, one in which he challenged his sentence just as the trial court had erroneously instructed him to do in order to preserve his rights.

¶ 10 Under these circumstances we reverse the trial court's order striking defendant's motion and remand this cause for defendant to be properly instructed pursuant to Rule 605(c) and to permit defendant to file any post-trial motions he chooses to in compliance with that rule.

¶ 11 Reversed and remanded with directions.