

2011 IL App (1st) 100414-U
No. 1-10-0414

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SIXTH DIVISION
August 5, 2011

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.)	Nos. 09 CR 5719
)	09 CR 9362
)	
JAMES BRECKENRIDGE,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE GARCIA delivered the judgment of the court.
Justices Cahill and R. E. Gordon concurred in the judgment.

ORDER

HELD: Defendant's appeal must be dismissed because he filed it without first filing a motion to vacate and withdraw the pleas of guilty pursuant to Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 1 Defendant James Breckenridge entered negotiated pleas of guilty to the possession of a controlled substance and armed habitual criminal. He was sentenced to consecutive terms of two and six years' imprisonment. On appeal, defendant contends that he was not properly admonished pursuant to Supreme Court Rule 605(c) (eff. Oct. 1, 2001), when the trial court

failed to inform him that he had the right to appeal, incorrectly explained the "avenues" of potential relief, and neglected to notify him of the consequences of actually vacating his pleas. We dismiss.

¶ 2 In October 2009, defendant entered negotiated pleas of guilty to the possession of a controlled substance in Case 09 CR 9362 and to armed habitual criminal in Case 09 CR 5719 in exchange for consecutive prison terms of two and six years. After informing defendant of the possible penalties associated with each charge and hearing a recitation of the factual basis for the charges, the trial court accepted the pleas. The court then admonished defendant that although he had entered guilty pleas in these cases he retained certain rights to appeal.

"In order for you to exercise those rights within 30 days you must file with this court a motion asking the court either to vacate your pleas of guilty or to reconsider the court's sentences. If you need an attorney to help you prepare those motions and you cannot afford one, the court would appoint one for you as well as provide you with a free transcript of everything that was said here today. Also those motions must contain every issue or claims of error with regard to the sentence or sentencing hearing or the plea of guilty. If you leave anything out of those motions, it will be deemed waived on any subsequent appeal."

¶ 3 The court then asked defendant if he understood these rights and defendant indicated that he did.

¶ 4 In December 2009, defendant filed a *pro se* motion seeking an extension of time to prepare and file his "motion to change [the] guilty plea." The motion stated that defendant had

not been able to research the case because he had been moved from place to place and asked for 60 days to file an appeal. The trial court denied the motion.

¶ 5 Defendant then filed a *pro se* motion for a late notice of appeal based upon the trial court's denial of the motion for an extension of time, which this court granted.

¶ 6 On appeal, defendant acknowledges that he failed to move to withdraw his guilty pleas and that ordinarily this would require us to dismiss his appeal. However, he contends that we should apply the "admonition exception" because the trial court failed to comply with the requirements of Rule 605(c) when it did not explain the right to appeal, the avenues of relief available, or the consequences of a successful motion to vacate the judgments and withdraw the guilty pleas.

¶ 7 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 of the date upon which the sentence was imposed, file in the trial court a motion to withdraw the guilty plea and vacate the judgment. Our supreme court has held that 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. *People v. Flowers*, 208 Ill. 2d 291, 300-01 (2003). Generally, the failure to file a Rule 604(d) motion precludes this court from considering a defendant's appeal, and the appeal must be dismissed. *Flowers*, 208 Ill. 2d at 301. However, under the admonition exception to the rule, if the trial court fails to admonish a defendant pursuant to Rule 605 and that defendant then tries to appeal without first filing the motions required by Rule 604(d), the cause is remanded to the trial court for strict compliance with Rule 604(d). *Flowers*, 208 Ill. 2d at 301.

¶ 8 Here, defendant entered into negotiated guilty pleas. Thus, the trial court was required to admonish him pursuant to Rule 605(c) that he: (1) had the right to appeal; (2) that before appealing, he must file within 30 days in the trial court a written motion that explained his

grounds for vacating the judgment and withdrawing the guilty plea; (3) that if the court granted the motion the sentence and judgment would be vacated and a trial date set upon those charges; (4) that the State may request that charges dismissed as part of the plea be reinstated and set for trial; (5) that an indigent defendant will be provided with a transcript of the plea hearing and counsel will be appointed to assist in the preparation of the motions; and (6) any claim not raised in the motion to vacate the judgment and withdraw the plea is waived on appeal. See Rule 605(c) (eff. Oct. 1, 2001).

¶ 9 Although the trial court must comply with the admonishments required by Rule 605(c), the court is not required to read the exact language of the rule to a defendant; rather, the court's admonitions will be deemed insufficient only where the court has omitted the substance of the rule. *People v. Claudin*, 369 Ill. App. 3d 532, 533 (2006). A trial court's compliance with supreme court rules is reviewed *de novo*. *People v. Thompson*, 238 Ill. 2d 598, 606 (2010).

¶ 10 Here, the trial court informed defendant that he had certain appellate rights and that in order to appeal he had to file a motion asking to vacate his pleas or reconsider his sentences within 30 days. The court also told defendant that he would receive a free transcript of the hearing as well as an appointed attorney to prepare the motions if he could not afford one, and that every claim of error with regard to the sentences, the sentencing hearing, or the guilty pleas must be raised in those motions because anything that was left out would be deemed waived in a subsequent appeal. These admonishments show compliance with four of the six subsections of Rule 605(c). See *Claudin*, 369 Ill. App. 3d at 533-34.

¶ 11 Nonetheless, defendant contends that the admonishments were insufficient because he was not informed of the consequences of a successful motion to withdraw the guilty pleas. See Rule 605(c) (3), (4). However, this court has previously rejected such an argument, finding that such "missing verbiage" does not prejudice a defendant or render the admonishments

insufficient. See *Claudin*, 369 Ill. App. 3d at 533-34 (trial court substantially complied with Rule 605(c) even though it did not inform the defendant of the consequences of a successful motion to withdraw the plea and vacate the judgment); see also *People v. Crump*, 344 Ill. App. 3d 558, 563 (2003) (finding substantial compliance although the trial court did not inform the defendant that any claims of error not raised in a postplea motion would be waived on appeal or that the State could reinstate certain charges if the motion to withdraw was granted).

¶ 12 Defendant further contends that the trial court's statement that he had to file a motion to withdraw the pleas or reconsider the sentences within 30 days was incorrect when his only avenue of relief was to file a motion to vacate his negotiated guilty pleas.

¶ 13 Defendant is correct, he could not have preserved his appellate rights by only filing a motion to reconsider his sentences in the trial court and the trial court's reference to such a motion was incorrect. However, the trial court conveyed the substance of Rule 605(c) to defendant by telling him that he had certain appellate rights, but that he had to file a motion in the trial court within 30 days in order to exercise them. See *Claudin*, 369 Ill. App. 3d at 534. Thus, defendant was put on notice that he could challenge the guilty pleas but that in order to do so an action on his part, *i.e.*, the filing of a motion in the trial court within 30 days, was required. See *In re J.T.*, 221 Ill. 2d 338, 347-48 (2006) (while the trial court's admonishments did not strictly comply with Rule 605(c), they were sufficient to put the minor on notice that "some action" on his part was required within 30 days if he wished to appeal). Although defendant told the trial court that he understood this requirement, he did not file a postplea motion.

¶ 14 Accordingly, because defendant was admonished pursuant Rule 605(c), his failure to file a Rule 604(d) motion to vacate the judgments and withdraw the guilty pleas before filing a notice of appeal cannot be excused by the admonition exception. See *Claudin*, 369 Ill. App. 3d

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at 534. This court is therefore precluded from considering the merits of his appeal and must dismiss it. *Flowers*, 208 Ill. 2d at 301.

¶ 15 Appeal dismissed.