

2011 IL App (1st) 100836-U
No. 1-10-0836

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).

FOURTH DIVISION
August 4, 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.)	No. 10 C4 40042
)	
JOSEPH NEWBERN,)	Honorable
)	Carol A. Kipperman,
Defendant-Appellant.)	Judge Presiding.

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

O R D E R

HELD: Defendant's appeal must be dismissed because he failed to first file a motion to vacate the judgment and withdraw the plea pursuant to Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 1 Defendant Joseph Newbern entered a negotiated plea of guilty to driving while his driver's license was suspended or

revoked, and was sentenced to 24 months in prison. On appeal, defendant contends that remand is necessary because the trial court's "confusing jumble of admonishments" failed to comply with Supreme Court Rule 605(c) (eff. Oct. 1, 2001). We dismiss.

¶ 2 At a February 4, 2010 hearing, the parties informed the trial court that defendant had agreed to enter a plea of guilty to driving while his driver's license was suspended or revoked in exchange for a sentence of 24 months in prison and credit for the 39 days he had already spent in custody.

¶ 3 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 could

"appeal this sentence. Since you made and [sic] agreed upon plea. You can appeal it by filing a vacation to plead. You would have to do that in this court in writing within 30 days and state all grounds, otherwise they are considered waived.

If you couldn't afford an attorney, one would be provided. If you couldn't afford a transcript, one would be provided. If you were successful in your motion to vacate your

plea, your case would be reinstated and set down for trial as if you never pled."

¶ 4 Defendant replied, "Yes Ma'am." The record also contains a written acknowledgment of appeal rights signed by defendant.¹

¶ 5 On March 16, 2010, this court received defendant's *pro se* notice of appeal, which was then forwarded to the circuit court. This court subsequently granted defendant permission to file a late notice of appeal.

¶ 6 On appeal, defendant acknowledges that his failure to file a motion in the trial court seeking to withdraw his guilty plea before filing a notice of appeal would ordinarily require this court to dismiss his appeal. However, he contends that the "admonition exception" must be applied because the admonishments in this case were a "confusing jumble *** that fell far short" of those required by Rule 605(c).

¶ 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

¹ The document is labeled as Rule 605(b) admonishments, although the content is that of Rule 605(c).

"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 Because defendant entered into a negotiated guilty plea the trial court was required to admonish him 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 strictly comply with the admonishments required by Rule 605(c), the trial court is not required to read the rule word-for-word to a defendant; rather, a 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 In the case at bar, the trial court substantially complied with Rule 605(c) when it informed defendant that he had the right to appeal, but before doing so he had to file a "vacation to plead" in the trial court within 30 days and that any grounds not stated in that motion would be waived. The court also told defendant that a free transcript and attorney would be provided to him and that if he was successful in his motion to vacate the plea, the case would be reinstated and set for trial as if he had never entered a plea. These admonishments show substantial compliance with Rule 605(c). See *Claudin*, 369 Ill. App. 3d at 533-34

¶ 11 Defendant however contends that the trial court failed to comply with Rule 605(c)(2) when, instead of telling him that the filing of a motion to withdraw his plea was a condition

precedent to an appeal, the court instructed him to file a "vacation to plead." See Rule 605(c)(2) (eff. Oct. 1, 2001).

¶ 12 Here, the trial court told defendant that in order to appeal he needed to file a "vacation to plead" within 30 days. The court subsequently stated that if defendant's motion to vacate the plea was successful the case would be reinstated as though defendant had never filed a guilty plea. While the trial court's initial title of the motion could have been clearer, the court later called the required postplea motion by its common name, *i.e.*, a motion to withdraw the plea. Regardless of the title given to the motion, the 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 his guilty plea but in order to do so he was required to take action within 30 days, *i.e.*, to file a motion in the trial court. 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). However, defendant did not file a postplea motion in the trial court before filing a notice of appeal.

1-10-0836

¶ 13 Accordingly, because defendant was adequately admonished pursuant Rule 605(c), his failure to file a Rule 604(d) motion to vacate the judgment and withdraw the guilty plea before filing a notice of appeal cannot be excused by the admonition exception. See *Claudin*, 369 Ill. App. 3d at 534. This court is therefore precluded from considering the merits of his appeal and must dismiss it. *Flowers*, 208 Ill. 2d at 301.

¶ 14 Appeal dismissed.