

2011 IL App (1st) 101017-U
No. 1-10-1017

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
)	Cook County, Illinois.
Plaintiff-Appellee,)	
)	
v.)	No. 09 CR 20938
)	
CARLOS PALENCIA,)	Honorable William T. O'Brien,
)	Judge Presiding.
Defendant-Appellant.)	

JUSTICE MURPHY delivered the judgment of the court.
Neville and Steele, JJ., concurred in the judgment.

ORDER

HELD: Defendant's appeal must be dismissed when he did not file a motion to vacate the judgment and withdraw the plea before filing an appeal.

¶ 1 Defendant Carlos Palencia entered a negotiated plea of guilty to aggravated driving under the influence, and was sentenced to 18 months in prison. On appeal, he contends that the trial court exceeded its authority pursuant to Supreme Court Rule 402 (eff. July 1, 1997), when it imposed \$50 more in fees and costs than were detailed in defendant's plea agreement. In the alternative, he contends that this cause must be remanded in order for the trial court to comply with Rule 605(c) (eff. Oct. 1, 2001). We dismiss.

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¶ 2 At the December 2009 plea hearing, the trial court explained to defendant that in exchange for his guilty plea he would be sentenced to 18 months in prison, serve one year of mandatory supervised release, receive credit for the 33 days he had already spent in custody, and be assessed \$1,270 in fees and costs. Defendant indicated, through an interpreter, that he understood.

¶ 3 After questioning defendant to ensure that the plea was made voluntarily and hearing the factual basis for the plea, the court accepted the plea, sentenced defendant to 18 months in prison, and assessed \$1,320 in fees and costs. The court then admonished defendant that he:

"had the right to appeal; however before you can appeal my decision, within thirty days of today's date, you must file with the Clerk of the Court a written motion to reconsider the sentence if only the sentence is being challenged, or if the plea of guilty is being challenged, the motion to withdraw your plea of guilty and vacate the judgment. In that motion you must state all of the reasons why you want to withdraw your plea of guilty or all the reasons why your sentence should be modified.

If I granted your motion to reconsider your sentence, I would conduct a new sentencing hearing. If I granted your motion to withdraw your plea of guilty, I would set your guilty plea aside and set your case for trial"

The court also told defendant that if the motion to vacate the plea was successful, the State could request that any charge dismissed as part of the plea agreement be reinstated and set for trial. On the other hand, if the court denied the motion, defendant would have 30 days to file an appeal. Any issue or claim of error not raised in a motion to reconsider the sentence or withdraw the guilty plea would be waived for purposes of an appeal. The court finally told defendant that if he could not afford an attorney or the cost of a transcript, those would be provided free of cost. The court then asked defendant whether he understood these rights, and defendant indicated that he did.

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¶ 4 Defendant did not file a postplea motion. Rather, on April 20, 2010, he filed a notice of appeal. This court granted defendant permission to file a late notice of appeal.

¶ 5 Defendant acknowledges that the failure to first file a motion to vacate the judgment and withdraw the plea in the trial court when appealing from a judgment entered on a negotiated guilty plea means that the appeal must be dismissed. See Rule 604(d) (eff. July 1, 2006); *People v. Flowers*, 208 Ill. 2d 291, 300-01 (2003) (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). However, he contends that his failure to comply with the requirements of Rule 604(d) must be excused pursuant to the "admonishment exception," and this cause remanded to the trial court because he was not properly admonished pursuant to Rule 605(c). See *Flowers*, 208 Ill. 2d at 301 (if the trial court fails to admonish the defendant pursuant to Rule 605 and the 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)).

¶ 6 Although the trial court must strictly comply with the admonishments required by Rule 605(c), the court is not required to read the rule verbatim; rather, the 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).

¶ 7 Here, the trial court informed defendant that he had the right to appeal, and that before appealing he had to file a written "motion to reconsider the sentence if only the sentence is being challenged, or if the plea of guilty is being challenged, the motion to withdraw your plea of guilty and vacate the judgment" within 30 days. The court also told defendant that any issues not raised in such a motion would be waived on appeal and that he had the right to a free transcript and the appointment of an attorney to help him prepare his motion. The court also explained that if the motion was allowed, the guilty plea would be set aside, his case would be set for trial, and the State could request that any charges dismissed as part of the plea agreement be reinstated. If the

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motion was denied, then defendant had 30 days to file an appeal. These admonishments establish substantial compliance with Rule 605(c). See *Claudin*, 369 Ill. App. 3d at 534.

¶ 8 Defendant, however, contends that the trial court did not comply with Rule 605(c)(2) because it indicated that he could file a motion to vacate the judgment and withdraw the plea or a motion to reconsider his sentence when, because his plea was negotiated, he needed to file a motion to withdraw the judgment and vacate the plea. See Rule 605(c)(2) (eff. Oct. 1, 2001).

¶ 9 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 when 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 his appeal rights would not have been preserved 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 defendant was "extraneous and incorrect." *Claudin*, 369 Ill. App. 3d at 534. However, the admonishments when read in context established that (1) 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, and (2) the defendant told the court that he understood this requirement. *Claudin*, 369 Ill. App. 3d at 534. Thus, the defendant's failure to file a Rule 604(d) motion was not excused by the admonishment exception and he had waived the right to a direct appeal. See *Claudin*, 369 Ill. App. 3d at 535.

¶ 10 Similarly, here, the trial court provided incorrect information when it told defendant that he could file a motion to withdraw the plea or a motion to reconsider the sentence. However, reading the trial court's admonishments in their entirety, this extraneous information does not provide cause for remand when the court conveyed the substance of the rule and put defendant on notice that in order to appeal he had to first file a postplea motion in the trial court within 30 days. See *Claudin*, 369 Ill. App. 3d at 534.

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¶ 11 This is not a case where a defendant filed the wrong kind of motion because of the trial court's failure to properly admonish him. Here, defendant did not file a postplea motion in the trial court before filing a notice of appeal. As in *Claudin*, the admonishments in this case did not strictly comply with Rule 605(c), however, they were sufficient to put defendant on notice of the postplea action needed to preserve his appeal, and he did not file a motion challenging his plea or even an improper motion to reduce his sentence. *Claudin*, 369 Ill. App. 3d at 534; see also *In re J.T.*, 221 Ill. 2d at 347-48 (although the admonishments did not strictly comply with Rule 605(c), they were sufficient to put the minor on notice that he could challenge his guilty plea and that "some action" on his part was required within 30 days if he wished to appeal).

¶ 12 Under these circumstances, defendant's 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, and his appeal must be dismissed. *Flowers*, 208 Ill. 2d at 301.

¶ 13 Appeal dismissed.