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2011 IL App (3d) 110079-U

Order filed December 22, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF
ILLINOIS,

Plaintiff-Appellee,

v.

MARK A. RUNYON

Defendant-Appellant.

) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
) Peoria County, Illinois,
)
) Appeal No. 3-11-0079
) Circuit No. 07-CF-807
)
) Honorable
) James E. Shadid,
) Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Wright and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The denial of the defendant's oral motion to withdraw his guilty plea and to reconsider his sentence was reversed because, although the trial court initially admonished the defendant that a written motion was required by Illinois Supreme Court Rule 604, the trial court then indicated that the defendant could proceed on an oral motion. The case was remanded for proper admonishments in accordance with Illinois Supreme Court Rule 605.

¶ 2 The defendant, Mark A. Runyon, pled guilty to one count of unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2008)) and was sentenced to 17 years' imprisonment. The trial court denied the defendant's oral motion to withdraw his guilty plea and

to reconsider his sentence. The defendant appealed, arguing that remand was necessary because he was not properly admonished pursuant to Illinois Supreme Court Rule 605(b) (eff. Oct. 1, 2001). We reverse and remand with directions.

¶ 3

FACTS

¶ 4 The defendant was charged by superceding indictment with one count of unlawful delivery of a controlled substance (720 ILCS 570/401(c)(2) (West 2008) and one count of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2008). When the case was called for jury trial, the defendant sought to plead guilty to the unlawful delivery charge, but he wanted the State to dismiss the weapons charge. Also, the defendant believed that he was not eligible for an extended term on the unlawful delivery charge and that the offense was probationable. The trial court explained that, due to the defendant's prior offense, the defendant was eligible for an extended term of 4 to 30 years in prison, and the defendant was not eligible for probation.

¶ 5 After admonishing the defendant of his rights, the trial court accepted the defendant's open plea to the charge of unlawful delivery of a controlled substance. Subsequently, the defendant filed a *pro se* "Motion to Exchange Guilty Plea." At his sentencing hearing, the defendant indicated that he wanted to proceed *pro se*, and the trial court allowed defense counsel to withdraw. The trial court denied the defendant's "Motion to Exchange Guilty Plea" and proceeded to sentencing. The trial court sentenced the defendant to 17 years in prison.

¶ 6 The trial court then advised the defendant that he could appeal, but the defendant must first file a written motion to reconsider his sentence or motion to withdraw his guilty plea. The defendant claimed to have already filed the motion to withdraw his guilty plea. The trial court

noted that Supreme Court Rule 604(d) required a written motion, and it encouraged the defendant to file a written motion. However, the trial court went on to note that it could accept that the defendant wanted to be heard immediately on an oral motion to reconsider his sentence and withdraw his plea. The defendant argued his oral motion, which was denied by the trial court. The defendant did not subsequently file a written motion, but he filed a notice of appeal.

¶ 7

ANALYSIS

¶ 8 The defendant argues that he was not properly admonished of the procedure for an appeal from a judgment entered upon a guilty plea. The State contends that the defendant was properly admonished and that the appeal must be dismissed because the defendant failed to file a written motion to withdraw his plea.

¶ 9 Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) provides that, before a defendant can appeal a 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 written motion to withdraw the guilty plea and vacate the judgment. The filing of a Rule 604(d) motion is a condition precedent to an appeal from a judgment on a guilty plea. *People v. Wilk*, 124 Ill. 2d 93, 105 (1988). Generally, the defendant's failure to file such a motion precludes the appellate court from considering the appeal on the merits, and the appeal must be dismissed. *People v. Flowers*, 208 Ill. 2d 291, 301 (2004). However, under the admonition exception to the rule, if the trial court fails to admonish the defendant in accordance with Illinois Supreme Court Rule 605 (eff. Oct. 1, 2001), and the defendant tries to appeal without filing the motions required by Rule 604(d), the appropriate course is to remand the cause to the trial court for strict compliance with Rule 604(d). *Flowers*, 208 Ill. 2d at 301.

¶ 10 In this case, the record is clear that the trial court initially admonished the defendant in accordance with Rule 605(b), including the admonition that any motions to reconsider sentence or motions to withdraw a plea had to be in writing. However, the trial court then agreed to allow the defendant to proceed on his oral motion. It is possible that the trial court intended to allow the defendant to argue his oral motion, expecting the defendant to subsequently file a written motion. However, it is not clear in the record that the defendant understood that it would still be necessary to file a written motion.

¶ 11 Accordingly, we reverse the trial court's judgment denying the defendant's oral postplea motion. We remand the cause to the trial court with directions to admonish the defendant pursuant to Rule 605(b) and to allow him to file a written postplea motion and perfect his appeal from his conviction pursuant to Rule 604(d). See *People v. Foster*, 171 Ill. 2d 469 (1996).

CONCLUSION

¶ 12 The judgment of the circuit court of Peoria County is reversed and remanded with directions.

¶ 13 Reversed and remanded.