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No. 3--07--0069

Order filed May 5, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 14th Judicial Circuit,
	)	Henry County, Illinois,
Plaintiff-Appellee,	)	
	)	No. 05--CF--337
v.	)	
	)	
FELIPE GUZMAN,	)	Honorable
	)	Larry S. Vandersnick,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Carter and Justice Lytton concurred in the judgment.

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**ORDER**

*Held:* The defendant's appeal of his sentence that was imposed pursuant to a plea agreement was remanded for proper admonishments because the defendant was never admonished that he had to file a motion to withdraw his partially negotiated plea before he could appeal.

The defendant, Felipe Guzman, pled guilty pursuant to a partially negotiated plea agreement to one count of unlawful

possession of more than 5,000 grams of a substance containing cannabis with the intent to deliver (720 ILCS 550/5(g) (West 2004)) and was sentenced to 17 years' imprisonment. The defendant appealed, arguing that he was denied a fair sentencing hearing. We remand for proper admonishments pursuant to Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001).

#### FACTS

The defendant was charged by indictment with: (1) calculated criminal cannabis conspiracy (720 ILCS 550/9 (West 2004)); (2) unlawful possession of more than 5,000 grams of a substance containing cannabis with the intent to deliver (720 ILCS 550/5(g) (West 2004)); and (3) unlawful cannabis trafficking over 5,000 grams of cannabis (720 ILCS 550/5.1(a) (West 2004)). At the final pretrial hearing, the State informed the trial court that the defendant was going to plead guilty to the second count, unlawful possession of more than 5,000 grams of a substance containing cannabis with the intent to deliver. The State agreed to a sentencing cap of 20 years on that count, and it agreed to dismiss the other two counts. The defendant affirmatively responded that he understood that the standard sentencing range for the offense was 6 to 30 years in prison, but that, pursuant to the plea agreement, he was going to receive a sentence between 6 and 20 years in prison. The trial court found that the

defendant's plea was voluntary and had a factual basis. The court accepted the partially negotiated plea.

After a sentencing hearing, the trial court sentenced the defendant to 20 years' imprisonment. In admonishing the defendant, the trial court stated:

"You have the right to appeal. If something went wrong, you've got 30 days to do something about it. It must be in writing and set forth all your reasons. I'll appoint a free lawyer, give you a free transcript if you're indigent. If the motion is granted, the State could reinstate anything it dismissed, and we'd have a trial on everything."

Thereafter, the defendant filed a written motion to reconsider his sentence, arguing that it was excessive and an abuse of discretion. The defendant also claimed that the trial court gave undue weight to certain aggravating factors. At the hearing on the motion, the trial court allowed the defendant to read a letter written by the defendant that should have been presented at sentencing, but, because it was written in Spanish, defense counsel did not realize that it gave background information about the defendant. In light of the statement given by the defendant, the trial court reduced the defendant's sentence to 17 years' imprisonment. The defendant appealed.

## ANALYSIS

The defendant challenges his sentence, arguing that the trial court improperly considered certain aggravating factors in sentencing him to 17 years' imprisonment. The State contends that the appeal should be dismissed for lack of jurisdiction or, alternatively, for the defendant's failure to file a motion to withdraw his guilty plea.

Illinois Supreme Court Rule 604(d) provides that:

"No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment."

Ill. S. Ct. R. 604(d) (eff. Nov. 1, 2000).

Generally, when a defendant fails to file a motion to withdraw his negotiated guilty plea in accordance with the requirements of Rule 604(d), the appellate court must dismiss the appeal. *People v. Linder*, 186 Ill. 2d 67 (1999). In the instant case, although the defendant challenges the trial court's consideration of certain aggravating factors, the defendant is essentially arguing that his sentence was excessive. However, the sentence was within the range that the defendant agreed to, and he never filed a motion to withdraw his plea. Thus, while it appears that the defendant waived his right to a direct appeal by failing to file

the appropriate Rule 604(d) motion, we must consider whether the trial court properly admonished the defendant in accordance with Illinois Supreme Court Rule 605 (eff. Oct. 1, 2001).

Our supreme court has held that there is an admonition exception to Rule 604(d) when the circuit court fails to give a defendant admonishments required by Rule 605, and the defendant attempts to appeal without first filing the motion required by 604(d).

*People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34 (2011). When a judgment is entered upon a negotiated plea of guilty, the trial court shall advise the defendant that: (1) he has the right to appeal; (2) that prior to taking an appeal, within 30 days of sentencing, he must file a motion to withdraw his plea; (3) if the motion is granted, the plea will be vacated; (4) the State may request to have reinstated charges that may have been dismissed as part of the plea; (5) if the defendant is indigent, a copy of the transcript of the proceedings will be provided free of cost and counsel will be appointed; and (6) in any appeal reinstated taken from the judgment on the plea of guilty, any claim not raised in the motion to withdraw the plea shall be deemed waived. Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001).

In this case, the trial court informed the defendant that he had the right to appeal, the State could reinstate charges if the defendant's motion was granted, it would appoint the defendant

legal counsel, and it would provide the defendant with free transcript if he was indigent. The trial court also informed the defendant that he had 30 days to file something in writing. The trial court did not admonish the defendant, however, that the "something" had to be a motion to withdraw his plea. The defendant did file a written motion: his motion to reconsider his sentence. Therefore, we conclude that the defendant was not properly admonished under Rule 605(c). Consequently, we remand for proper admonishments.

#### CONCLUSION

For the foregoing reasons, this cause is remanded to the circuit court of Henry County for proper admonishments in strict compliance with Rule 605.

Remanded.