

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).

2011 IL App (4th) 110707-U

Filed 11/23/11

NO. 4-11-0707

IN THE APPELLATE COURT  
OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
KENT E. MONTAG,	)	No. 09CF46
Defendant-Appellant.	)	
	)	Honorable
	)	Charles M. Feeney,
	)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.  
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the trial court's admonishments did not comply with Illinois Supreme Court Rule 605(a) (eff. Oct. 1, 2001), remand for further proceedings was necessary.

¶ 2 This appeal comes to us on the motion of defendant Kent E. Montag's counsel, the office of the State Appellate Defender (OSAD), for remand (1) with directions to treat his July 19 and July 21, 2011, *pro se* letters as timely postsentencing motions in accordance with Illinois Supreme Court Rule 606(b) (eff. Mar. 20, 2009) or (2) for admonishments in compliance with Illinois Supreme Court Rule 605(a) (eff. Oct. 1, 2001).

¶ 3 I. BACKGROUND

¶ 4 In July 2009, defendant pleaded guilty to aggravated driving while license revoked (625 ILCS 5/6-303(a) (West 2008)). Thereafter, the trial court sentenced him to 30

months' probation.

¶ 5 In March 2011, the State filed a petition to revoke defendant's probation, alleging that he committed the following offenses while on probation: (1) driving while license revoked, Woodford County case No. 11-CF-12; (2) driving while license revoked, Woodford County case No. 11-TR-239; (3) illegal transportation of alcoholic liquor, Woodford County case No. 11-TR-240; (4) following too closely, Woodford County case No. 11-TR-241; and (5) no registration light, Woodford County case No. 11-TR-242. In May 2011, defendant admitted violating the terms of his probation by driving while license revoked (Woodford County case No. 11-CF-12). Following the June 21, 2011, sentencing hearing, the trial court resentenced defendant to two years' imprisonment to run concurrent with the sentence imposed in Woodford County case No. 11-CF-12 and consecutive to the sentence imposed in Woodford County case No. 11-CF-45. (A joint sentencing hearing was held in Woodford County case Nos. 09-CF-46, 11-CF-12, and 11-CF-45.)

¶ 6 On July 19, 2011, defendant's wife, Darlene F.B. Montag, *pro se* filed a letter on defendant's behalf, stating the following:

"I, the defendant in the above captioned cases, motion the court to file a notice of appeal for each of the above cases [*i.e.*, Woodford County case No. 11-CF-45, Woodford County Case No. 09-CF-46, and Woodford County case No. 11-CF-12]. [T]his post-sentence motion to appeal is challenging the sentences in the above cases to be excessive.

And further, upon a finding of indigence, appoint the Appellate Defender's Office to represent me, Kent Montag, the Defendant."

The letter further stated that defendant had sent "one as well" on July 16, 2011, and indicated defendant's power of attorney (naming Darlene to serve as defendant's power of attorney) was attached.

¶ 7 On July 19, 2011, defendant mailed a *pro se* unnotarized letter from prison by depositing it into the prison mail system, requesting the circuit clerk file a notice of appeal in Woodford County case Nos. 11-CF-45, 11-CF-12, and 09-CF-46. (The *pro se* letter was filed July 21, 2011.) Further, the letter stated as follows: "This post sentence motion is to appeal by challenging the sentences in the above cases to be excessive." Defendant requested that the "appellate defense office" be appointed upon a finding of indigence. The trial court's July 21, 2011, docket entry indicates defendant's letter was treated as a motion to file appeal and, consequently, the circuit clerk filed a notice of appeal on his behalf and appellate counsel was appointed.

¶ 8

## II. ANALYSIS

¶ 9 OSAD has filed a motion for summary remand (1) with directions to treat defendant's July 19 and July 21, 2011, *pro se* letters as timely postsentencing motions in accordance with Illinois Supreme Court Rule 606(b) (eff. Mar. 20, 2009) or (2) for admonishments in compliance with Illinois Supreme Court Rule 605(a) (eff. Oct. 1, 2001). The State concedes this case should be remanded with directions to admonish defendant pursuant to Rule 605(a) and allow him an opportunity to file a postsentencing motion. Although the State notes an appeal from a non-guilty plea may proceed despite a trial court's Rule 605(a) admonishments being deficient, it argues this case should be remanded because "(1) the two-year sentence imposed here may have been affected by the sentences in the other two cases consolidated for

sentencing, and (2) the trial judge should have determined whether defendant wished to appeal or have his letter treated as a post-plea motion."

¶ 10 Following the revocation of a defendant's probation, the trial court must admonish the defendant that if he seeks to challenge the correctness of his sentence, or any aspect of the sentencing hearing, he "*must file* within 30 days of the date on which sentence is imposed a written motion asking the trial court to reconsider the sentence\*\*\*." (Emphasis added.) Ill. S. Ct. R. 605(a)(3)(B) (eff. Oct. 1, 2001). "[W]here a defendant is given incomplete Rule 605(a) admonishments regarding the preservation of sentencing issues for appeal, remand is required only where there has been prejudice or a denial of real justice as a result of the inadequate admonishment." *People v. Henderson*, 217 Ill. 2d 449, 466, 841 N.E.2d 872, 881 (2005).

¶ 11 In the present case, the trial court admonished defendant as follows:

"Mr. Montag, you have a right to appeal the orders of this court.

If you wish, you *may* file a written motion within 30 days of today asking this court \*\*\* for leave to withdraw your pleas of guilty or admissions to the petition to revoke. Or you *may* file a motion to reconsider the sentence. Each and every reason must be stated in this written motion why I should allow you to withdraw your pleas of guilty or your admissions or why I should reconsider your sentence, or any other reason will be deemed waived or given up for the purposes of your appeal.

If I grant your motion, your pleas could be vacated, and a trial would be set on the charges to which you have pled guilty.

Upon the State's request, any charges that were dismissed pursuant to any agreement could be reinstated and also set for trial or your sentence could be modified.

If I should deny your motion and you still wish to appeal, then within 30 days of the date that I would deny your motion you would need to file a written Notice of Appeal. You can ask the clerk to prepare and file that Notice of Appeal for you, but it still must be filed within that same 30-day time frame or you would lose or give up your right to an appeal.

If you cannot afford it, an attorney can be appointed to assist you on your motions and on your appeal without cost to you, and a copy of the transcript of these proceedings can be given to you without cost as well." (Emphases added.)

The trial court's admonishments were deficient because the court advised defendant that he *may* file a motion to reconsider sentence before appealing the court's orders. Instead, if defendant wished to challenge his sentence, he was *required* to file a written motion asking the trial court to reconsider the imposed sentence. As a result of the court's improper admonishments, the notice of appeal must be stricken and the cause remanded to the trial court with directions that the court properly admonish defendant in compliance with Rule 605(a) and allow him an opportunity to file an appropriate postsentencing motion.

¶ 12

### III. CONCLUSION

¶ 13

Accordingly, we grant OSAD's motion and remand the cause with directions to

strike the notice of appeal, properly admonish defendant in accordance with Rule 605(a), and allow defendant an opportunity to file an appropriate postsentencing motion.

¶ 14            Remanded with directions.