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).

NO. 4-09-0758 Order filed 2/16/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. STEVEN A. MILLER, Defendant-Appellant.	))))))))	Appeal from Circuit Court of Vermilion County No. 05CF520 Honorable Craig H. DeArmond, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

Held: Where the trial court failed to properly admonish defendant following the imposition of sentence after his plea of guilty, this cause must be remanded for strict compliance with supreme court rules.

In January 2006, defendant, Steven A. Miller, pleaded guilty to one count of first degree murder. In April 2006, the trial court sentenced him to 35 years in prison. In July 2009, defendant filed a *pro se* petition for postconviction relief and a motion for reduction of sentence. In August 2009, the court dismissed both the petition and the motion.

On appeal, defendant argues (1) his case must be remanded for strict compliance with Supreme Court Rule 605(b) (eff. Oct. 1, 2001) and (2) he is entitled to an offset against certain fees. We reverse and remand with directions.

I. BACKGROUND

In September 2005, the State charged defendant by information with four counts of first degree murder and three different aggravating factors. In count I, the State alleged defendant committed the offense of first degree murder (720 ILCS 5/9-1(a)(1) (West 2004)) in that he, without lawful justification and with the intent to kill, performed the acts that caused the death of Eva Miller. Counts II, III, and IV alleged similar offenses pertaining to Eva Miller. The aggravating factors centered on defendant's use of a firearm (730 ILCS 5/5-8-1(a)(1)(d) (West 2004)).

In January 2006, defendant pleaded guilty to count I, and the State agreed to dismiss the remaining counts. There was no agreement as to sentencing. The trial court admonished defendant that he could receive a sentence of 20 to 60 years in prison. Following a factual basis, the court accepted defendant's plea of guilty on count I.

In April 2006, the trial court conducted the sentencing hearing and sentenced defendant to 35 years in prison. The court gave defendant credit for 217 days spent in custody. The court then admonished defendant, in part, as follows:

> "If you wanted to appeal you'd first have to file within 30 days of today a written motion asking to have the judgment va-

> cated and for leave to withdraw your plea of guilty and set forth your grounds for that motion. If that motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made."

Defendant did not file a postplea motion or a direct appeal.

In July 2009, defendant filed a *pro se* petition for postconviction relief under the Post-Conviction Hearing Act (725 ILCS 5/122-1 through 122-8 (West 2008)), alleging his constitutional rights were violated in part because his attorney did not move to withdraw his plea after hearing the trial court's admonishments. Defendant also filed a motion for reduction of sentence.

In September 2009, the trial court dismissed the postconviction petition, finding it frivolous and patently without merit. The court also dismissed the motion for reduction of sentence as untimely. This appeal followed.

II. ANALYSIS

A. Rule 605(b)

Defendant argues his case must be remanded for strict compliance with Rule 605(b), claiming the trial court failed to admonish him that he had 30 days in which to file a motion to

reconsider sentence. The State concedes that remand is required.

Section 605(b) (Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001)) provides, in part, as follows:

> "In all cases in which a judgment is entered upon a plea of guilty, other than a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:
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> ***
>
> (2) that prior to taking an appeal the defendant must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the trial court reconsider the sentence or to have the judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion;
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> * * *
>
> (6) that in any appeal taken from the judgment on the plea of guilty any issue or claim of error

> not raised in the motion to reconsider the sentence or to vacate the judgment and to withdraw the plea of guilty shall be deemed waived."

"The supreme court's rules are not aspirational; rather, they have the force of law. [Citation.] Trial courts must strictly comply with the admonition requirements of Rule 605." *People v. Young*, 387 Ill. App. 3d 1126, 1127, 903 N.E.2d 434, 435 (2009).

In the case *sub judice*, defendant agreed to plead guilty to count I, and the State agreed to dismiss the remaining counts. No agreement was made as to sentencing. As the State made no concessions relating to the sentence here, the plea was not a negotiated one. See Ill. S. Ct. R. 605(b) (eff. Oct. 1, 2001). Therefore, as Rule 605(b) applied, the trial court was required "to admonish the defendant he may file a motion (1) to reconsider sentence or (2) to have the judgment vacated and for leave to withdraw the plea of guilty." *Young*, 387 Ill. App. 3d at 1128, 903 N.E.2d at 436. The court, however, provided defendant with admonishments pertaining to Rule 605(c) (Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001)). Accordingly, we must remand defendant's cause for the purpose of receiving new admonishments strictly complying with Rule 605(b) and the filing of new postsentencing motions under Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. July 1, 2006)).

B. Youth-Diversion Fee

Defendant argues he is entitled to a *per diem* offset of his $4 youth-diversion fee and a reduction of his violent-crime-victims assessment. However, because we are remanding with directions for proper admonishments, we cannot review the merits of this issue. See *People v. Jamison*, 181 Ill. 2d 24, 29-30, 690 N.E.2d 995, 998 (1998); *People v. Foster*, 171 Ill. 2d 469, 474, 665 N.E.2d 823, 826 (1996) (stating an appellate court is without discretion to address the merits and must remand for strict compliance with supreme court rules); *People v. Anderson*, 309 Ill. App. 3d 417, 422, 722 N.E.2d 244, 248 (1999). We note the correct amount of sentence credit and any offset to applicable fines can be addressed in the trial court if raised in a motion subsequent to proper admonishments.

III. CONCLUSION

For the reasons stated, we reverse and remand with directions to the circuit court of Vermilion County.

Reversed and remanded with directions.