

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. 4-10-0660

Filed 01/05/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
LAURA J. BLAND,)	No. 10CF217
Defendant-Appellant.)	
)	Honorable
)	Lisa Holder White,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

Held: Where the trial court did not admonish defendant pursuant to Illinois Supreme Court Rule 605(c) (eff. October 1, 2001), remand for further proceedings was necessary.

This appeal comes to us on the motion of defendant Laura J. Bland's counsel, the office of the State Appellate Defender (OSAD), for remand for strict compliance with Illinois Supreme Court Rule 605(c) (eff. October 1, 2001). The State declined to file a response. We agree with OSAD and remand with directions.

I. BACKGROUND

In June 2010, defendant pleaded guilty to theft of property having a value in excess of \$300, a Class 3 felony (720 ILCS 5/16-1(a)(1)(A), 16-1(b)(4) (West 2008)), pursuant to a negotiated plea. In accordance with the plea agreement, the trial court sentenced defendant to four years' imprisonment. The court did not admonish defendant as required by Illinois Supreme Court Rule 605(c) (eff. October 1, 2001).

On August 11, 2010, defendant filed a *pro se* motion to reduce sentence. The trial court found it lacked jurisdiction to consider defendant's motion and dismissed it. On August 23, 2010, defendant filed a *pro se* notice of appeal.

II. ANALYSIS

OSAD asserts this case should be remanded for further proceedings in accordance with Rule 605(c). We agree.

If a defendant who pleaded guilty pursuant to a negotiated plea--*i.e.*, one that binds the State to recommend a specific sentence or range of sentences less severe than the statutory maximum--seeks to challenge the sentence as excessive, the defendant must, within 30 days after sentencing, file a motion to withdraw his or her guilty plea and vacate the judgment of conviction. Ill. Sup. Ct. R. 604(d) (eff. July 1, 2006); *People v. Diaz*, 192 Ill. 2d 211, 225, 735 N.E.2d 605, 612 (2000). In this case, defendant's postplea motion was deficient in two respects: first, the motion was filed more than 30 days after sentencing and, second, defendant filed a motion for reduction of sentence instead of a motion to withdraw her guilty plea and vacate the judgment of conviction.

However, if a defendant's failure to comply with Rule 604(d) is attributable to the trial court's noncompliance with Illinois Supreme Court Rule 605 (eff. October 1, 2001), then the cause should be remanded for the court to admonish the defendant as required by Rule 605 and to accord the defendant an opportunity to comply with Rule 604(d). *People v. Foster*, 171 Ill. 2d 469, 473-74, 665 N.E.2d 823, 825-26 (1996); accord *People v. Crowder*, 351 Ill. App. 3d 1096, 1098, 815 N.E.2d 1244, 1246 (2004). Rule 605(c) requires the trial court, after entering judgment upon a defendant's negotiated guilty plea, to advise the defendant of the conditions that must be satisfied before an appeal may be

taken. See Ill. Sup. Ct. R. 605(c) (eff. October 1, 2001) (setting forth the required admonishments).

In this case, defendant's noncompliance with Rule 604(d) was excused by the trial court's noncompliance with Rule 605(c). The court gave no admonishments whatsoever regarding defendant's right to appeal from her conviction and sentence; specifically, the court did not advise defendant she was required to file a motion to withdraw her guilty plea and vacate the judgment of conviction within 30 days or else she would forfeit her right to challenge the length of her sentence (and other aspects of the judgment against her) at the trial and appellate levels. Although defendant's postplea motion was deficient, the deficiencies in defendant's motion were excused as she was not properly admonished pursuant to Rule 605(c).

III. CONCLUSION

Accordingly, we remand with directions that the trial court properly admonish defendant in strict compliance with Rule 605(c) and allow her the opportunity to file an appropriate postplea motion. See *Crowder*, 351 Ill. App. 3d at 1098, 815 N.E.2d at 1246.

Remanded with directions.