

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) 100075-U

Filed 7/28/11

NO. 4-10-0075

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiffs-Appellee,	)	Circuit Court of
v.	)	Logan County
TREVER J. GOODEY,	)	Nos. 08CF124
Defendant-Appellant.	)	09CF59
	)	
	)	Honorable
	)	Thomas M. Harris,
	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.  
Justices Steigmann and McCullough concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in dismissing defendant's motion to reduce his agreed-upon sentence because defendant failed to move to withdraw his fully negotiated admission agreement with the State which included sentencing concessions and was tied to another fully negotiated plea agreement.

¶ 2 In May 2009, after entering fully negotiated agreements in case Nos. 09-CF-59 and 08-CF-124, the trial court sentenced defendant Trever J. Goodey to a term of 6 years in prison, with credit for 59 days served in case No. 09-CF-59 (felony domestic battery with a prior domestic battery, a Class 4 felony), and a term of 7 years in prison, with credit for 60 days served in case No. 08-CF-124 (petition to revoke conditional discharge of forgery, a Class 3 felony). The agreement entered in each case referenced the other case, stating the sentences in both cases would run concurrently. In June 2009, defendant mailed from prison a single *pro se* motion for

reduction of his sentences in both cases. The State filed a motion to dismiss, and, in December 2009, the trial court allowed the State's motion. Defendant appeals, arguing he was entitled to a hearing on his motion. We affirm .

¶ 3

## I. BACKGROUND

¶ 4 In October 2008, the State charged defendant with one count of forgery (720 ILCS 5/17-3(a)(2) (West 2008)) in case No. 08-CF-124. The State alleged defendant was eligible for an extended-term sentence between 2 and 10 years in prison. On March 3, 2009, defendant pleaded guilty to forgery in exchange for a sentence of 30 months of conditional discharge and the dismissal of an unrelated charge.

¶ 5 On March 25, 2009, the State charged defendant with one count of domestic battery with a prior domestic battery conviction (720 ILCS 5/12-3.2(a)(1), (b) (West 2008)), a Class 4 felony for which he was eligible for an extended term of between one and six years in prison, in case No. 09-CF-59.

¶ 6 On May 8, 2009, the State filed a petition to revoke defendant's conditional discharge imposed in case No. 08-CF-124 because of the State's domestic-battery charge against defendant in case No. 09-CF-59. On May 28, 2009, defendant entered into two fully negotiated agreements. In case No. 08-CF-124, defendant admitted violating his conditional discharge in exchange for a seven-year prison sentence, which would be served concurrently with his sentence in case No. 09-CF-59. In case No. 09-CF-59, defendant pleaded guilty to felony domestic battery with a prior domestic battery conviction in exchange for a six-year prison sentence, which would be served concurrently with his sentence in case No. 08-CF-124. The trial court concurred with the agreements and entered judgments consistent with the terms of the

agreements.

¶ 7 The trial court then admonished defendant if he wished to appeal the judgments and/or sentences entered by the court he needed to file a motion to withdraw his guilty plea and his admission, setting forth all the reasons why he sought to withdraw his guilty plea and admission.

¶ 8 On June 26, 2009, defendant mailed from prison a *pro se* motion to reduce his sentence. He listed both case Nos. 08–CF–124 and 09–CF–59 on the motion. On August 31, 2009, the State filed motions in both cases to dismiss defendant's motion to reduce his sentence, arguing defendant needed to move to withdraw his plea and admission before appealing on the basis of an excessive sentence.

¶ 9 On December 22, 2009, an assistant public defender appeared for defendant at a status hearing on defendant's motion to reduce his sentence. When asked whether he intended to file a response to the State's motion to dismiss defendant's motion to reduce his sentence, the assistant public defender stated:

"My understanding is this was a Fully Negotiated Plea of Guilty in which this gentleman was sentenced to a term of seven years I believe in the Department of Corrections. Within 30 days I think he filed a Motion to Reduce his sentence, and quite frankly, I think the Rule provides in order for him to address those issues, he has to file a motion to withdraw his plea of not guilty [*sic*] if it is a Fully Negotiated Plea, so I don't have a need to respond to that. I don't have the court file, but if he has not filed his motion to withdraw

his plea, I am not sure he has any recourse at this point."

¶ 10 On December 23, 2009, the trial court allowed the State's motions to dismiss defendant's motions to reduce his sentence in case Nos. 08–CF–124 and 09–CF–59.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues the trial court was correct he could not seek a reduction of his sentence in case No. 09–CF–59 because he had not filed a motion to withdraw his guilty plea. However, defendant argues the court erred regarding his ability to seek a reduction of his sentence in case No. 08–CF–124. Defendant cites our supreme court's opinion in *People v. Tuft*, 165 Ill. 2d 66, 74-75, 649 N.E.2d 374, 378 (1995), for the proposition Illinois Supreme Court Rules 605(b) (eff. Oct. 1, 2001) and 604(d) (eff. July 1, 2006) are not applicable to proceedings involving the revocation of conditional discharge. As a result, according to defendant, he was not required to file a motion to withdraw his admission in case No. 08–CF–124. Therefore, defendant argues he is entitled to a hearing on his motion for reduction of his sentence in case No. 08–CF–124.

¶ 14 Defendant also argues the trial court erred by admonishing him he must first file a motion to withdraw his guilty plea and admission if he wanted to file an appeal. Instead, the court should have told defendant he had 30 days to file an appeal after he was sentenced pursuant to Illinois Supreme Court Rule 605(a) (eff. Oct. 1, 2001).

¶ 15 The State acknowledges defendant's admission of the revocation of conditional discharge, if viewed in isolation, was not the same as a guilty plea. However, the State argues, under the distinct circumstances in this case, defendant was estopped from unilaterally seeking to

reduce his sentence in case No. 08–CF–124. We agree.

¶ 16 This case is distinguishable from *Tufte*. In *Tufte*, the defendant admitted he violated the terms of the conditional discharge, but he and the State had not come to any agreement with regard to sentencing. Instead, the defendant entered an open admission. *Tufte*, 165 Ill. 2d at 68, 649 N.E.2d at 375. In addition, the defendant's agreement was not tied to another case.

¶ 17 In the case *sub judice*, it is clear from the record defendant's fully negotiated agreements in both cases were related. The fully negotiated plea agreements in case Nos. 08–CF–124 and 09–CF–59 were both presented to the trial court at the same hearing and both made clear the agreed sentences would run concurrently.

¶ 18 Defendant received the benefit of concurrent sentences in these two cases for a set amount of years in exchange for admitting he violated the terms of the conditional discharge in case No. 08–CF–124 and entering a guilty plea in case No. 09–CF–59. However, he now seeks to unilaterally modify the agreement by seeking a reduction of his agreed upon sentence in case No. 08–CF–124 while still maintaining the other benefits of his bargain. He is estopped from doing so.

¶ 19 To allow defendant to unilaterally modify his agreement with the State by seeking a reduction of his agreed-upon sentence while maintaining the other benefits of his bargain cannot be condoned. See *People v. Evans*, 174 Ill. 2d 320, 327, 673 N.E.2d 244, 248 (1996). As our supreme court has stated:

"Were we to hold otherwise would be to 'encourage gamesmanship of a most offensive nature' [citation]. The accused

could negotiate with the State to obtain the best deal possible in modifying or dismissing the most serious charges and obtain a lighter sentence than he would have received had he gone to trial or entered an open guilty plea, and then attempt to get that sentence reduced even further by reneging on the agreement. This would be 'nothing more than a "heads-I-win-tails-you-lose" gamble' [Citations.]. Prosecutors would be discouraged from entering into negotiated plea agreements were such an unfair strategy allowed to succeed. That result certainly would not advance our policy of encouraging properly administered plea bargains." *Evans*, 174 Ill. 2d at 327-28, 673 N.E.2d at 248.

¶ 20 The result we reach in this case advances our policy of encouraging properly administered plea bargains.

¶ 21 As for defendant's argument he should have been admonished pursuant to Rule 605(a), we disagree. Because we find defendant, based on the facts in this case, had to move to withdraw his guilty plea and his admission before he could move to reduce his agreed-upon sentence, he was properly admonished.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 24 Affirmed.