

Michael Jones of the Saline County sheriff's department, S.R. went home, retrieved the camera's memory card, and delivered it to Jones. Numerous pornographic images of the defendant sexually assaulting S.R. were subsequently downloaded from the card. The record indicates that the pictures were taken in the summer and fall of 2005.

¶ 5 On January 24, 2006, after contacting Deputy Jones, S.R.'s mother brought him several items, including a digital camera and a zip drive. The zip drive contained additional pornographic images of S.R. and also contained pornographic images of her older half-sister, K.G. The images from the zip drive were taken in 1999 and 2000, when K.G. was approximately 15 years old and S.R. was approximately 9.

¶ 6 On January 26, 2006, the defendant was charged in the present case, No. 06-CF-38, with six counts of criminal sexual assault (counts I through VI) and two counts of child pornography (counts VII and VIII). S.R. was the named victim in all eight counts, and the charges stemmed from images found on the memory card. In No. 06-CF-186, the defendant was later charged with two counts of criminal sexual assault in which K.G. was the named victim and one count of child pornography based on one of the images of S.R. that was found on the zip drive.

¶ 7 Following a jury trial, the defendant was convicted of the three counts charged in No. 06-CF-186, and on February 2, 2007, the trial court sentenced him to serve consecutive sentences totaling 39 years. In February 2008, those convictions and sentences were affirmed on direct appeal. See *People v. Rann*, No. 5-07-0103 (2008) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)).

¶ 8 On July 23, 2008, by agreement of the parties, the instant cause proceeded to a stipulated bench trial that was equivalent to a guilty plea. Pursuant to the parties' agreement, the cause proceeded to the stipulated bench trial on counts I and VIII only, and the State dismissed the remaining counts. In addition, the State agreed to recommend that consecutive

six-year sentences be imposed on counts I and VIII.

¶ 9 At the stipulated bench trial, the trial court fully admonished the defendant pursuant to Supreme Court Rule 402(a) (eff. July 1, 1997) and further determined that the defendant understood the terms of the parties' agreement and was proceeding voluntarily (see Ill. S. Ct. R. 402(b) (eff. July 1, 1997)). After the defendant indicated that he did not wish to present a defense, the State summarized the testimony of its proposed witnesses, and the defendant agreed that the stipulated evidence was sufficient to convict him on counts I and VIII. Thereafter, the trial court entered a judgment finding the defendant guilty on both counts.

¶ 10 On August 21, 2008, notwithstanding the State's recommendation that consecutive 6-year sentences be imposed, the trial court sentenced the defendant to serve consecutive 15-year sentences on his convictions on counts I and VIII. At the conclusion of the sentencing hearing, the trial court advised the defendant that he could appeal his sentence by filing a motion to reconsider the sentence.

¶ 11 On September 16, 2008, the defendant filed a motion to reduce sentence, arguing that the imposition of consecutive 15-year terms was "excessive and unduly harsh" under the circumstances. On October 20, 2008, the defendant filed a motion to withdraw his stipulation to the facts underlying his convictions on counts I and VIII. In the motion to withdraw stipulation, he argued that should be allowed to withdraw his stipulation and proceed to a jury trial.

¶ 12 On October 23, 2008, the trial court held a hearing on the defendant's motion to reduce sentence and motion to withdraw stipulation. At the commencement of the hearing, defense counsel stated that after speaking with the defendant, they had decided to withdraw the motion to withdraw stipulation. After confirming that such was the case, the trial court granted the defendant's motion to withdraw the motion to withdraw stipulation. The cause then proceeded on the motion to reduce sentence, and defense counsel tendered a Supreme

Court Rule 604(d) (eff. July 1, 2006) certificate stating that he had, *inter alia*, made "any necessary amendments to the motion to reduce sentence." After denying the defendant's motion to reduce sentence, the trial court advised him that he could challenge the ruling by filing a timely notice of appeal.

¶ 13

DISCUSSION

¶ 14 While a plea of guilty waives all nonjurisdictional defenses or defects, "a stipulated bench trial can avoid the waiver rule while still allowing the parties to proceed with the benefits and conveniences of a guilty plea procedure." *People v. Horton*, 143 Ill. 2d 11, 22 (1991). However, a stipulated bench trial is tantamount to a guilty plea where a defendant stipulates to the facts and the sufficiency of the evidence (*People v. Mitchell*, 353 Ill. App. 3d 838, 844 (2004)) or where he fails to present and preserve a defense (*Horton*, 143 Ill. 2d at 22). Here, the stipulated bench trial was tantamount to a guilty plea on both grounds, and because the State "bound itself to recommend a specific sentence," it was tantamount to a "negotiated plea" pursuant to Supreme Court Rules 604(d) and 605(c) (Ill. S. Ct. R. 604(d) (eff. July 1, 2006); R. 605(c) (eff. Oct. 1, 2001)). "If a stipulated bench trial is tantamount to a guilty plea, the supreme court rules pertaining to guilty pleas must be followed." *People v. Thompson*, 404 Ill. App. 3d 265, 270 (2010).

¶ 15 Pursuant to Rule 604(d), to perfect an appeal from a judgment entered on a negotiated plea, a defendant must file a written motion to withdraw his plea and vacate the judgment. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). "Compliance with Rule 604(d) is a condition precedent to a defendant's appeal" (*People v. Jamison*, 181 Ill. 2d 24, 28 (1998)), and Rule 605 "mandates that trial judges admonish defendants regarding the requirements of Rule 604(d), thus ensuring that the ramifications of noncompliance comport with due process" (*People v. Foster*, 171 Ill. 2d 469, 472 (1996)). "Rule 605 is a necessary corollary to Rule 604(d)" (*People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 41 (2011)), and the two rules "are

meant to work together" (*Jamison*, 181 Ill. 2d at 29). If a defendant fails to comply with the motion requirements of Rule 604(d), "the appellate court must dismiss the appeal." *People v. Linder*, 186 Ill. 2d 67, 74 (1999).

¶ 16 Here, at the sentencing hearing, the defendant was admonished, *inter alia*, that he could appeal his sentence by filing a motion to reconsider sentence, but he was not admonished that he had to first file a motion to vacate the judgment of conviction that was entered. While the admonishments that the defendant received were therefore consistent with Rule 605(b), which governs open pleas, they failed to comply with Rule 605(c), which governs negotiated pleas. "When the trial court fails to properly admonish a defendant how to perfect an appeal from a negotiated guilty plea, and [the] defendant fails to follow Rule 604(d), it is appropriate to remand the cause to the trial court for proceedings consistent with Rule 605(c)." *People v. Pressey*, 357 Ill. App. 3d 887, 890 (2005). We recognize that the defendant voluntarily withdrew his motion to withdraw stipulation and proceeded only on his motion to reduce sentence. He was never admonished that the former motion was a condition precedent to his appeal, however, and he was led to believe that he could appeal the denial of his motion to reduce sentence without moving to set aside the judgment. "Dismissal of an appeal based on a defendant's failure to file the requisite motions in the trial court would violate due process if the defendant did not know that filing such motions was necessary" (*People v. Flowers*, 208 Ill. 2d 291, 301 (2003)), and we accordingly remand the cause for compliance with Rule 605(c). Given our disposition, we need not address the defendant's other arguments, but we do note that the substance of his claim that the trial court erred in denying his motion to suppress evidence was rejected when raised on direct appeal from his convictions in No. 06-CF-186. See *People v. Rann*, No. 5-07-0103 (2008) (unpublished order under Supreme Court Rule 23).

¶ 17

CONCLUSION

¶ 18 For the foregoing reasons, we reverse the trial court's judgment and remand this cause for compliance with Rule 605(c).

¶ 19 Reversed and remanded with directions.