

No. 1-09-3500

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 05 CR 15804
)	
CLIFFORD ROBERTS,)	The Honorable
)	Diane Gordon Cannon,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant perfected his appeal from an open plea of guilty by filing a motion to reconsider sentence; trial court substantially admonished defendant under Rule 605(b); judgment affirmed.

¶ 2 Defendant Clifford Roberts pleaded guilty to first degree murder and predatory criminal sexual assault of an 18-month-old girl, and was sentenced to consecutive terms of 60 and 15 years' imprisonment. On appeal, defendant contends that he is entitled to have his case remanded

for new post-plea proceedings because the trial court failed to properly admonish him in accordance with Supreme Court Rule 605(b) (eff. Oct. 1, 2001).

¶ 3 In September 2009, defendant sought a plea agreement with the State in a potential capital case. Following a case management conference, defendant entered an open plea of guilty to first degree murder and predatory criminal sexual assault. The court then advised defendant that he was eligible for the death penalty or natural life imprisonment without parole, and defendant indicated that he understood. A factual basis for the plea was accepted by the court which detailed the brutal first degree murder and predatory sexual assault of the 18-month-old baby girl which occurred while her twin and other young siblings were outside the bedroom in earshot of her screams.

¶ 4 Defendant waived his right to determine if he was death eligible, and at the hearing which followed, testimony was elicited from the medical examiner. The trial court found it clear from this testimony that the victim's death resulted from exceptionably brutal and heinous behavior indicative of wanton cruelty, and that defendant was eligible for the death penalty.

¶ 5 Defendant then waived his right to a jury for the aggravation and mitigation stage of sentencing. In mitigation, the defense relied on the presentence investigation report (PSI) and defendant chose not to testify. Counsel then argued, *inter alia*, that the "biggest factor" to consider was that defendant pleaded guilty to all the counts he was charged with in the case, and therefore, took responsibility for his actions, and showed remorse. Counsel further argued that defendant's plea of guilty said something very positive about him in that he did not put the family through a trial, and did not make the victim's young siblings testify before a jury. Defendant requested a sentence of years, rather than natural life, and the State sought the death penalty.

¶ 6 Following the State's arguments in aggravation, the court stated that:

"[I] can only say that your plea of guilty, your acceptance of your responsibility, your willingness to keep young children from testifying to that horrific night, your willingness to keep a mother from testifying, a mother who made a decision to bring you, a three time convicted felon, into her home and put her children in harm's way, that is the only thing that bodes in your favor really."

¶ 7 The court further stated that defendant's plea was "the only reason right now that I am finding that there is sufficient mitigation to preclude the death penalty in this case." The court sentenced defendant to 60 years' imprisonment for his first degree murder conviction, noting that the seven first degree murder counts merged, and ordered it to run consecutively to the 15 year-sentence imposed on the predatory criminal sexual assault offense.

¶ 8 The court then admonished defendant that:

"[y]ou have rights to appeal which is a motion to reconsider the sentence. That motion must be made in the next 30 days in writing, setting forth the reasons why or they may be waived in the future.

If you do not have the money for a lawyer, one will be provided free of charge to assist you, and transcripts will be provided free of charge.

If those motions are denied, you have 30 days to appeal, and that motion must be made in writing setting forth the reasons why or

they may be waived."

¶ 9 Immediately thereafter, defendant, through counsel, filed a written motion to reconsider the sentence which the court denied. The court then advised defendant that he had 30 days to appeal the sentence, and "[t]hat motion must be made in writing, setting forth the reasons why or they may be waived." The court then admonished defendant that if he did not have the money for an attorney, one would be provided free of charge to assist him and the transcripts would also be provided free of charge. Defendant filed a notice of appeal, and here contends that the court's failure to properly admonish him in accordance with Supreme Court Rule 605(b), requires that his case be remanded for proceedings consistent with that rule.

¶ 10 Supreme Court Rule 604(d) (eff. July 1, 2006), provides, in relevant part, that no appeal from a judgment entered upon a plea of guilty shall be taken unless defendant, within 30 days of the date on which sentence is imposed, files in the trial court a motion to reconsider the sentence, if only the sentence is being challenged, or, if the plea is being challenged, a motion to withdraw the plea of guilty and vacate the judgment. Ill. S. Ct. R. 604(d). On appeal, any issue not raised by defendant in the motion to reconsider the sentence or withdraw the plea of guilty and vacate the judgment shall be deemed waived. Ill. S. Ct. R. 604(d).

¶ 11 Rule 605(b) serves as a corollary to Rule 604(d) and sets forth the admonitions the circuit court must give a defendant who has pleaded guilty without a negotiated sentence. *People v. Brooks*, 233 Ill. 2d 146, 154 (2009). Rule 605(b) provides, in pertinent part:

"(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 fourth the grounds for the motion;

(3) that if the motion is allowed, the sentence will be modified or 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;

(4) that upon the request of the State any charges that may have been dismissed as part of a plea agreement will be reinstated and will also be set for trial; ***

(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 sentence or to vacate the judgment and to withdraw the plea of guilty shall be deemed waived."

¶ 12 In this case, defendant entered an open plea of guilty, filed a written post-plea motion to reconsider his sentence within the allotted time period, then timely filed a notice of appeal from the denial of that motion. He now maintains that this court should excuse his procedural default in failing to file a motion to withdraw his guilty plea because of the trial court's faulty admonitions.

¶ 13 In support of his contentions, defendant relies on *People v. Jamison*, 181 Ill. 2d 24, 27 (1988), a capital case where the trial court accepted defendant's guilty plea, then solely informed him that he had 30 days to file any post-plea motions, and defendant filed a timely motion to

reconsider sentence. *Jamison*, 181 Ill. 2d at 27. The supreme court in *Jamison*, 181 Ill. 2d at 29, considered whether remand was required for 605(b) admonitions when an "unadmonished" defendant fails to file a motion to withdraw his guilty plea. The general, single sentence admonition given by the trial court was found insufficient, and since there was nothing in the record to guide the court about defendant's reasons for only filing a motion to reconsider his sentence, the supreme court remanded the cause for Rule 605(b) admonishments. *Jamison*, 181 Ill. 2d at 29-30. The supreme court in *Jamison*, however, did not hold that defendant had to file a motion to withdraw his guilty plea in order to perfect an appeal from an open plea, as defendant impliedly argues here. Rather, and contrary to defendant's contention, when an open plea is entered, defendant may perfect an appeal without moving to withdraw his guilty plea by filing a motion to reconsider sentence. *People v. Wyatt*, 305 Ill. App. 3d 291, 294 (1999); Ill. S. Ct. R. 605(b); Ill. S. Ct. R. 604(d). In this case, defendant timely filed a motion to reconsider sentence, and then timely filed notice of appeal from the denial of that motion. *In re J.T.*, 221 Ill. 2d 338, 346 (2006); see also *People v. Wilk*, 124 Ill. 2d 93, 109-10 (1988). In doing so, he perfected his appeal and preserved any sentencing issues for review.

¶ 14 Notwithstanding, defendant maintains that his case must be remanded for new post-plea proceedings because the trial court failed to properly admonish him in accordance with Supreme Court Rule 605(b)(2), regarding his right to file a motion to withdraw his plea. The State responds that this court should hold defendant judicially estopped from arguing this issue on appeal where he used his guilty plea in mitigation against the death penalty, and the trial court relied on defendant's plea as its only basis for not imposing the death penalty. Defendant replies that the State has not provided any legal support for its claim of judicial estoppel, that *Jamison*

must be followed and that the cause should be remanded for proper admonishments and an opportunity to withdraw his plea if he so chooses.

¶ 15 As noted, Rule 605(b) essentially advises defendant of the requirements to perfect an appeal from a plea of guilty without a negotiated sentence. *Brooks*, 233 Ill. 2d at 154. The supreme court recently determined that Rule 605(b) must be strictly complied with in that the admonitions must be given to a defendant who has pled guilty, and the failure to do so requires remand; however, the court also affirmed that the plain meaning of the rule requires only that a defendant be substantially advised of the actual content of the rule. *People v. Dominguez*, 2012 IL 111336, ¶11. The supreme court stated that the trial court must substantially advise defendant in such a way that he is properly informed, or put on notice, of what he must do in order to preserve his right to appeal his guilty plea or sentence, and that so long as the admonitions were sufficient to impart to defendant the essence or substance of the rule, the court has substantially complied with the rule. *Dominguez*, ¶22. We review the trial court's compliance with the rule *de novo*. *People v. Breedlove*, 213 Ill. 2d 509, 512 (2004).

¶ 16 In this case, the trial court admonished defendant, in pertinent part, that he has, "[r]ights to appeal which is a motion to reconsider the sentence. That motion must be made in the next 30 days in writing, setting forth the reasons why or they may be waived in the future." The court then further admonished him that "[y]ou have 30 days to appeal, and that motion must be made in writing setting forth the reasons why or they may be waived." By advising defendant that he must file a written motion to reconsider his sentence within 30 days, setting forth the reasons for his request, or risk waiving those issues, the court conveyed to defendant the essence of the rule. *Dominguez*, ¶22. Although the court failed to admonish him of the disjunctive option set forth

in subsection (2) regarding the filing of a motion to withdraw his plea of guilty (Ill. S. Ct. R. 605(b)(2)), this omission, considered in context, provides no basis for reversal. Unlike *Jamison*, the reasons for defendant only filing a motion to reconsider his sentence are evident in the record which clearly shows that the trial court relied on defendant's guilty plea as the sole basis for not imposing the death penalty in this case, and acceded to defendant's request for an imposition of years rather than a sentence of natural life. The record also shows that defendant filed a written motion to reconsider his sentence immediately after the plea proceedings, thereby indicating the focus of his direct appeal.

¶ 17 This focus is further indicated on appeal where defendant acknowledges in his reply brief that he is not currently seeking to withdraw his guilty plea, but is instead asking for a remand for proper admonishments "so that he may, if he so chooses, then seek to vacate the plea."

Notwithstanding, the fact that the trial court's admonition under subsection (2) was imperfect, (*Dominguez*, ¶54), defendant's argument appears to elevate form over substance. When the admonitions are read in context of the plea proceedings, they show that defendant was substantially advised of his appeal rights, and perfected an appeal therefrom. Moreover, any constitutional issues arising from those proceedings may be raised in a petition under the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2010)). *Wilk*, 124 Ill. 2d at 107.

¶ 18 With regard to defendant's further contention that the trial court failed to admonish him of subsections (3), (4), and (6) of the rule, we observe that the same arguments have been made and rejected by the court; and where, as here, defendant was substantially admonished of his appeal rights, there is no prejudice from the missing verbiage. *People v. Claudin*, 369 Ill. App. 3d 532, 534 (2006), citing *People v. Crump*, 344 Ill. App. 3d 558, 563 (2003). We further note that

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subsection (4) of Rule 605(b), namely, "that upon the request of the State any charges that may have been dismissed as part of the plea agreement will be reinstated and will also be set for trial," was not at issue here as no charges were dismissed as part of the plea agreement. Moreover, the trial court substantially admonished defendant of subsection (6) when it informed him that any issues not raised would "be waived."

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 20 Judgment affirmed.