

No. 1-10-1824

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. 08 CR 18211
)
 CATRELL HOLMES,) Honorable
) Thomas M. Davy,
 Defendant-Appellant.) Judge Presiding.

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant's motion to reconsider sentence was improperly filed, it should have been stricken; we therefore vacate the judgment of the circuit court of Cook County denying the motion. We remand this matter to the trial court to allow defendant the opportunity to file a motion to withdraw his guilty plea pursuant to Supreme Court Rule 605(c).

¶ 2 Defendant Catrell Holmes pleaded guilty to one count of aggravated battery with a firearm and one count of aggravated discharge of a firearm. He was sentenced to a term of 18 years in prison for the aggravated battery with a firearm conviction and a concurrent term of 15

1-10-1824

years in prison for the aggravated discharge of a firearm conviction. The trial court denied defendant's motion to reconsider sentence. Defendant now appeals, contending that the automatic transfer provision of the Illinois Juvenile Court Act is unconstitutional. We vacate and remand.

¶ 3 BACKGROUND

¶ 4 The relevant facts are not disputed. On March 10, 2010, defendant entered into a negotiated plea to two counts: aggravated battery with a firearm, and aggravated discharge of a firearm. In exchange, the State dismissed the remaining charges against defendant. After sentencing, the trial court advised defendant as follows: “you do have the right to appeal both the fact that I found you guilty and the sentence that I have given you.”

¶ 5 Supreme Court Rule 605(b) states in relevant part:

“(b) On Judgment and Sentence Entered on a Plea of Guilty. 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:

- (1) that the defendant has a right to appeal;
 - (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.”
- (emphasis added.) Sup. Ct. Rule 605(b).

1-10-1824

Supreme Court Rule 605(c) states in relevant part:

“(c) On Judgment and Sentence Entered *on a Negotiated Plea of Guilty*. In all cases in which a judgment is entered upon a negotiated plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

- (1) that the defendant has a right to appeal;
- (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 judgment vacated and for leave to withdraw the plea of guilty, setting forth the grounds for the motion[.]” (emphasis added.) Sup. Ct. Rule 605(c).

Thus, while Supreme Court Rule 605(b) allows a written motion asking to have the trial court reconsider the sentence, this does not apply to a negotiated guilty plea which is instead governed by Supreme Court Rule 605(c).

¶ 6 Apparently, defendant, who had entered a negotiated plea of guilty, believed he had the right to contest his sentence alone. Although our review of the transcript shows that the trial court did not state that defendant could file a written motion to reconsider his sentence alone, the State concedes: “Here, admittedly, the trial court erroneously admonished the defendant pursuant to Supreme Court Rule 605(b) rather than pursuant to Supreme Court Rule 605(c).” The State also concedes that the incorrect admonishment “resulted in defendant filing a timely, albeit improper motion seeking to reduce his sentence.” Defendant filed the motion on April 6, 2010. The trial court denied the motion on June 8, 2010. Defendant filed this appeal on June 11, 2010.

1-10-1824

¶ 7

ANALYSIS

¶ 8 Defendant challenges the constitutionality of the automatic transfer provision of the Juvenile Court Act under both the Illinois and Federal constitutions. The State first argues, however, that this appeal should be dismissed because defendant failed to comply with the requirements of Supreme Court Rule 604(d) which states: “No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment.” S. Ct. Rule 604(d) (eff. July 1, 2006).

¶ 9 The Illinois Supreme Court discussed this requirement in *People v. Evans*, 174 Ill. 2d 320 (1996). Applying contract law principles to negotiated plea agreements, the *Evans* court explained that a defendant should not be allowed to hold the State to its part of the bargain while unilaterally modifying the sentence to which he had earlier agreed. *Id.* at 326. Thus, the court in *Evans* held that “when a defendant pleads guilty in exchange for a specific sentence, he must move to withdraw the guilty plea and vacate the judgment prior to challenging his sentence.” *People v. Wilson*, 181 Ill. 2d 409, 412 (1998).

¶ 10 As our supreme court more recently explained:

“The filing of a Rule 604(d) motion is a condition precedent to an appeal from a judgment on a plea of guilty. [Citation.] The discovery that a defendant has failed to file a timely 604(d) motion in the circuit court does not deprive the appellate court of jurisdiction over a subsequent appeal. [Citation.] As a general rule, however, the failure to file a timely Rule 604(d) motion precludes the

1-10-1824

appellate court from considering the appeal on the merits. Where a defendant has failed to file a written motion to withdraw his plea of guilty or to reconsider his sentence, the appellate court must dismiss the appeal [citation], leaving the Post-Conviction Hearing Act as the defendant's only recourse.” *People v. Flowers*, 208 Ill. 2d 291, 301 (2003).

¶ 11 Defendant does not dispute these general principles but, instead, relies only on the fact that he filed a “timely” written motion to reconsider his sentence. While this is true, as the State notes, defendant's motion was improper. Under the plain language of Rule 604(d) and the holdings of our supreme court, a defendant who enters a *negotiated* plea of guilty cannot appeal his sentence unless he first files a motion to withdraw the plea of guilty and vacate the judgment.

¶ 12 Nonetheless, in the instant case, the State concedes that the reason defendant filed the improper motion seeking to reduce his sentence was due to erroneous admonishments at the time he entered his plea of guilty. Having determined that defendant was required to file a motion to withdraw his guilty plea prior to challenging his sentence, we must remand this cause to the circuit court, “where defendant may be properly admonished and, if he so chooses, file a motion to withdraw his guilty plea and vacate the circuit court's judgment.” *People v. Diaz*, 192 Ill. 2d 211, 226-27 (2000). As the *Flowers* court explained:

“If the trial court fails to give the admonishments set forth in Rule 605 and the defendant subsequently attempts to appeal without first filing the motions required by Rule 604(d), the appeal is not dismissed. Instead, the appropriate course is to remand the cause to the trial court for strict compliance with Rule 604(d).

1-10-1824

[Citations.]” *Flowers*, 208 Ill. 2d at 301.

¶ 13 We recognize that the trial court here eventually provided admonishments to defendant regarding the necessity of first withdrawing his guilty plea. However, the admonishments were given only as part of the court's ruling on defendant's motion to reconsider sentence and not at the time of sentencing. The court explained that under the relevant rules, “there is a provision to vacate and for leave to withdraw the plea of guilty, not specifically to reconsider the sentence.”

The court then stated as follows:

“So, because of that, at this time the motion to reconsider sentence will be denied.

I am not sure if you have a right to appeal from that ruling, but if [you do], it would be within 30 days of today's date.”

The State now asserts that the trial court thus corrected its previous error when it provided the correct admonishment at the hearing on defendant's motion. Therefore, according to the State, we should dismiss defendant's appeal because, after receiving the correct admonishments, defendant chose not to withdraw his plea of guilty. We disagree.

¶ 14 The incorrect admonishments given at the time defendant entered his plea of guilty resulted in the filing of the improper motion to reconsider. At the hearing on the improper motion, the transcript shows that defense counsel correctly stated “we are here on Mr. Holmes' motion to reconsider sentence.” Defense counsel also stated that he spoke to defendant and “[h]e told me that this was not a motion to withdraw his guilty plea.” Nothing in the transcript, however, shows that defense counsel or defendant “chose” not to withdraw the guilty plea. Although proper admonishments were given *at the hearing on the motion to reconsider sentence*,

1-10-1824

we believe the motion to reconsider sentence should have been stricken and defendant allowed additional time to make an informed decision as to whether he wanted to file a motion to withdraw his guilty plea. We therefore remand this cause to the circuit court, “where defendant may be properly admonished and, *if he so chooses*, file a motion to withdraw his guilty plea and vacate the circuit court's judgment.” (Emphasis added.) *Diaz*, 192 Ill. 2d at 226-27.

¶ 15 Although by our decision we do not reach the merits of defendant's argument that the automatic transfer provision is unconstitutional, we note that defendant acknowledged in his briefs that his arguments had already been rejected by this court in *People v. Salas*, 2011 IL App (1st) 091880, ¶¶ 75-80. Nonetheless, defendant contended that *Salas* was incorrectly decided. We also note that, during the pendency of the instant appeal, subsequent decisions have agreed with *Salas*. See *People v. Croom*, 2012 IL App (4th) 100932, ¶ 16 (adopting the First District's holding and concluding that defendant's argument was without merit); *People v. Sanders*, 2012 IL App (1st) 102040, ¶¶ 34-37 (“We see no reason to revisit that precedent in this case, and we therefore follow *Jackson* and *Salas* in rejecting defendant's claims of unconstitutionality.”); *People v. Jackson*, 2012 IL App (1st) 100398.

¶ 16 CONCLUSION

¶ 17 In accordance with the foregoing, we vacate the decision of the circuit court of Cook County and remand this matter to allow defendant, if he so chooses, to file a motion to withdraw his guilty plea and vacate the circuit court's judgment.

¶ 18 Vacated; cause remanded.