

No. 1-10-2513

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. 10 CR 5766
)	
JUAN RIOS,)	Honorable
)	Catherine A. Haberkorn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MURPHY delivered the judgment of the court.
Presiding Justice Steele and Justice Salone concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant was not admonished that in order to appeal from entry of his negotiated guilty plea he was first required to file a postplea motion and he timely filed a notice of appeal, the admonishments were insufficient and the case was remanded for proper admonishments.
- ¶ 2 Defendant Juan Rios entered a negotiated guilty plea to one count of residential burglary and was sentenced as a Class X offender based on his criminal background to eight years in prison. On appeal, defendant contends that his case must be remanded because the court failed to provide adequate postplea admonishments under Supreme Court Rule 605(c) (eff. Oct. 1, 2001). We reverse and remand.

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¶ 3 Defendant was charged with residential burglary, burglary, and robbery. A plea conference was held and on July 14, 2010, defendant entered a negotiated plea of guilty to one count of residential burglary. The trial court sentenced him as a Class X offender based on his criminal background to eight years in prison. After sentencing, the trial court admonished defendant as follows:

"You have a right to appeal my sentence today. If you feel I've been wrong or unfair in the decision of your case, you have a right to appeal that. If you cannot afford a lawyer, I will appoint one for you. If you need a copy of the transcript, I will get that to you also. Once 30 days passes by, you waive your rights to appeal.

If you wish me to reconsider anything that's been involved in the sentencing of the case, or you want to withdraw the plea of guilty for some reason, you must motion the case back up before me within the next 30 days, state the grounds you would like me to reconsider or tell me why you want to withdraw the plea. If you do not put these issues in writing back before me before the appeal, they'll be waived once you get to the appeal."

Defendant filed no postplea motions but timely filed a notice of appeal on August 11, 2010.

¶ 4 On appeal, defendant contends that the trial court failed to comply with the Rule 605(c) admonishments in several respects and requests remand of his cause so that he may receive adequate admonishment pursuant to Rule 605(c) and have the opportunity to file a motion to vacate his guilty plea.

¶ 5 Supreme Court Rule 604(d) (eff. July 1, 2006), requires a defendant who enters a negotiated plea to file a motion to vacate the judgment and withdraw his guilty plea within 30 days of sentencing prior to filing an appeal. Generally, if a defendant fails to comply with Rule

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604(d), his appeal must be dismissed. *People v. Flowers*, 208 Ill. 2d 291, 301 (2003). Dismissal is not proper, however, where the trial court failed to adequately admonish the defendant of his appeal rights under Rule 605 (eff. Oct. 1, 2001). *Flowers*, 208 Ill. 2d at 301; *People v. Gougisha*, 347 Ill. App. 3d 158, 161 (2004). We review *de novo* the trial court's compliance with Rule 605. *People v. Young*, 387 Ill. App. 3d 1126, 1127 (2009).

¶ 6 Rule 605(c) sets out six admonishments for negotiated pleas. Although the trial court is required to strictly comply with Rule 605, the precise language of the rule is not required. *People v. Claudin*, 369 Ill. App. 3d 532, 533 (2006). If the trial court's admonishments were insufficient and the defendant failed to comply with Rule 604(d), the defendant's cause must be remanded for proper admonishments. See *People v. Jamison*, 181 Ill. 2d 24, 29-30 (1998). An admonishment will be considered insufficient if the court omits the substance of the rule. *Claudin*, 369 Ill. App. 3d at 533.

¶ 7 Defendant's main contention is that the trial court failed to inform him that he was required to file a written postplea motion before he could appeal. Rule 605(c)(2) (eff. Oct. 1, 2001), provides that when a defendant has entered into a negotiated plea, the trial court shall inform him that, in order to appeal, he *must* first file written motions to have the judgment vacated and for leave to withdraw the plea of guilty. Here, the trial court told defendant that he had the right to appeal and that if he wanted to "reconsider anything that's been involved in the sentencing of the case, or *** withdraw the plea of guilty for some reason," that he needed to file that motion within 30 days. Defendant was also informed that if he did not put those issues in written form before the appeal, "they'll be waived once you get to the appeal." However, the court never explained that filing a postplea motion was a " 'condition precedent for an appeal from a defendant's plea of guilty.' " *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34, 40 (2011) (quoting *People v. Wilk*, 124 Ill. 2d 93, 104 (1988)). Rather, the trial court's admonishments presented defendant with the option of either filing a postplea motion or filing an appeal within

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30 days of the judgment. Accordingly, we find the trial court's admonishments failed to convey the substance of Rule 605(c)(2) and were therefore inadequate.

¶ 8 The State cites several cases in support of its assertion that the trial court nonetheless substantially complied with the requirements of Rule 605. See *In re J.T.*, 221 Ill. 2d 338 (2006); *Claudin*, 369 Ill. App. 3d 532; *People v. Crump*, 344 Ill. App. 3d 558 (2003). However, these cases may be distinguished on the basis that, in each, the trial court admonished the defendant that he first had to file a postplea motion before he could appeal. *In re J.T.*, 221 Ill. 2d at 347; *Claudin*, 369 Ill. App. 3d at 533-534; *Crump*, 344 Ill. App. 3d at 560. Here, defendant received no notice that he was required to file a postplea motion before he could file an appeal.

¶ 9 Moreover, in *Claudin*, after indicating he understood the court's admonishments, the defendant failed to file any postplea motion and instead filed a notice of appeal. *Claudin*, 369 Ill. App. 3d at 533. This court found even though the trial court misinformed defendant about which postplea motion he had to file, the admonishments were sufficient to put defendant "on notice" that he needed to file some postplea motion before filing an appeal. *Claudin*, 369 Ill. App. 3d at 534. Despite being put on notice, the defendant failed to file any postplea motion and, therefore, the court concluded that defendant could not avail himself of the admonition exception. *Claudin*, 369 Ill. App. 3d at 535; see also *In re J.T.*, 221 Ill. 2d at 347-48 (the defendant did not receive supervisory relief from the trial court's allegedly faulty admonishments because the admonishments were sufficient to put the defendant on notice that "some action on his part within 30 days was necessary if he wished to appeal," and the defendant took no action at all).

¶ 10 In contrast, in the present case, defendant followed the trial court's admonishments by filing a notice of appeal within 30 days of the judgment. Nonetheless, Rule 604(d) requires a defendant to file motions to vacate the judgment and withdraw his plea of guilty before filing a notice of appeal in order to challenge his negotiated plea. Defendant's failure to comply with Rule 604(d) was due to his following the trial court's incorrect admonishments. *Cf. Claudin*, 369

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Ill. App. 3d at 534. As a result, this cause must be remanded to the trial court for strict compliance with Rule 605(c).

¶ 11 As we have concluded the trial court failed to comply with Rule 605(c)(2), we see no need to address defendant's remaining contentions of inadequate admonishments.

¶ 12 Accordingly, we remand this cause to the trial court to provide defendant with proper admonishments pursuant to Rule 605(c), within 30 days of the date our mandate is filed in the trial court, so that defendant may have the opportunity to file motions to vacate the judgement and withdraw his guilty plea pursuant to Rule 604(d), if he so chooses. If defendant is found to be indigent, the trial court shall appoint counsel to assist him. If defendant files a postplea motion and it is denied by the trial court, he may then appeal the denial of that motion.

¶ 13 Remanded with directions.