

No. 1-10-3702

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. 09 CR 17971
)	
KELLY ROBINSON,)	Honorable
)	Thomas M. Tucker,
Defendant-Appellant.)	Judge Presiding.

JUSTICE JAMES FITZGERALD SMITH delivered the judgment of the court.
Justices PUCINSKI and STERBA concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant was substantially informed that, in order to appeal, he was required to file a postplea motion within 30 days, and defendant is unable to show he was prejudiced by the trial court's faulty admonishments, defendant forfeited his right to appeal and the appeal is dismissed.
- ¶ 2 Defendant Kelly Robinson entered a negotiated guilty plea to one count of possession of more than 5,000 grams of cannabis and was sentenced to six years in prison. On appeal, defendant contends that the trial court's dismissal of his untimely and improper postplea motion

must be remanded because the court failed to provide adequate postplea admonishments under Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001). We dismiss the appeal.

¶ 3 Defendant was charged with possession of more than 5,000 grams of cannabis and possession with intent to deliver more than 5,000 grams of cannabis. On July 15, 2010, after a plea conference, defendant entered a negotiated plea of guilty to one count of possession. The trial court sentenced him to six years in prison. After sentencing defendant, the trial court admonished him as follows:

"Sir, even though you have plead (*sic*) guilty and been found guilty, you have rights. Those rights include your right to return to court within 30 days to file motions to vacate your plea and/or reconsider sentence. The motion must be in writing, contain all the reasons to support them. Any reasons not contained therein would not be preserved for purposes of appeal.

Should your motion to vacate your plea of guilty be granted, the plea of guilty, [*sic*] judgment I have entered thereon will be vacated, meaning erased, the case will be set back down on the trial calendar for further proceedings. Should your motion to reconsider sentence be granted, you will be resentenced.

In the event these motions are denied, you have a right within 30 days of denial to return to file a notice of appeal of the court's ruling. If you wish to do so and you cannot afford an attorney, one would be given to you free of charge, along with transcripts necessary for those purposes."

The State nol-prossed the intent to deliver charge.

¶ 4 On October 5, 2010, defendant filed a *pro se* motion for reduction of sentence. In a letter filed with the motion, defendant explained that he was unable to file the motion within 30 days of his sentencing "due to being incarcerated at Stateville Correctional Center from July 19th to September 17th 2010 with no access to law materials or any materials to prepare the motion." He requested an extension of time to file the motion.

¶ 5 On October 15, 2010, the trial court dismissed defendant's motion for lack of jurisdiction. On December 17, 2010, defendant filed a *pro se* motion for leave to file a late notice of appeal. This court granted the motion.

¶ 6 On appeal, defendant admits that his postplea motion was untimely and improper but contends that his noncompliance was the result of inadequate postplea admonishments. Thus, defendant claims his cause should be remanded for proper admonishments and the opportunity to file a motion to withdraw his guilty plea and vacate the judgment.

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

¶ 8 Rule 605(c) sets out the 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).

However, an admonishment is insufficient only if the court omits the substance of the rule.

Claudin, 369 Ill. App 3d at 533.

¶ 9 Defendant first argues that the court did not substantially comply with Rule 605(c)(1) because it failed to tell him he had the right to an appeal. In support, he cites *Gougisha*, 347 Ill. App. 3d 158 (2004). However, in *Gougisha*, the trial court failed to make any mention of the defendant's right to appeal. *Gougisha*, 347 Ill. App. 3d at 160. Here, in contrast, the trial court told defendant if his postplea motion was denied, he had the right to file a notice of appeal. Despite the trial court not beginning the admonishments by saying "you have a right to appeal," the court clearly conveyed the substance of the rule.

¶ 10 Second, defendant argues that the court failed to inform him that he had a right to free transcripts and appointed counsel to assist with his postplea motions and instead only referred to his right to free transcripts and counsel as it pertained to the appeal. According to Rule 605(c)(5) (eff. Oct. 1, 2001), the trial court must advise a defendant that if he is indigent, a copy of the trial and sentencing transcripts will be provided and counsel will be appointed to assist with the postplea motions. The substance of this rule will be considered sufficiently conveyed if the trial court admonished the defendant that he had the right to an attorney and transcripts, even if it does not specify that the attorney could assist him with postplea motions. See *People v. Dunn*, 342 Ill. App. 3d 872, 882 (2003) (the trial court's admonishments were sufficient where the court admonished the defendant that, if indigent, he had the right to counsel and free transcripts, despite not specifically referring to the right in the context of postplea motions); *cf.* *People v. Lloyd*, 338 Ill. App. 3d 379, 385 (2003) (where the trial court failed to mention the defendant's right to an appointed attorney if indigent the admonishment was insufficient); *People v. Anderson*, 309 Ill. App. 3d 417, 419, 422 (1999) (where the trial court admonished the

defendant that he would be appointed counsel if he could not afford one "to represent [him] on appeal," the court failed to substantially convey that the defendant had a right to counsel for postplea motions). Here, though the trial court did not mention defendant's rights specifically in reference to postplea motions, the court explained the right to an attorney and transcripts generally, making defendant aware of the substance of the rule. .

¶ 11 Next, defendant claims that the trial court misinformed him as to which postplea motions he was required to file and failed to admonish him that the dismissed charge would be reinstated if his postplea motions were successful. Rule 605(c) requires that, when a defendant has entered into a negotiated plea, the trial court 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. Ill. S. Ct. R. 605(c)(2) (eff. Oct. 1, 2001). The rule further states that the trial court shall advise the defendant that if the motions succeed, "any charges that may have been dismissed *** will be reinstated and will also be set for trial." Ill. S. Ct. R. 605(c)(4) (eff. Oct. 1, 2001).

¶ 12 We acknowledge that the trial court erred by misadvising defendant as to which postplea motions he was required to file in order to appeal and by failing to inform defendant of the consequences if his motions succeeded. Notwithstanding the error, defendant did not file a timely postplea motion despite being substantially informed that he was required to file a written motion within 30 days and that anything not in that motion would not be considered on appeal. Furthermore, the record shows that defendant understood he was required to file a motion within 30 days. In the letter defendant attached to his untimely postplea motion to reduce sentence, defendant explained why he was unable to file the motion within 30 days. Even if defendant had filed the correct motion, it still would have been untimely. A cause will not be reversed when a defendant is substantially advised of his right and unable to show he was prejudiced by the misinformation. *Claudin*, 369 Ill. App. 3d at 533-534; *People v. Crump*, 344 Ill. App. 3d 558,

563 (2003). In the case before us, defendant is unable to show prejudice. We recognize that defendant contends that both *Claudin* and *Crump* were wrongly decided. However, we see no need to depart from the well-reasoned opinions and therefore decline to do so.

¶ 13 Defendant also relies on *Young*, 387 Ill. App. 3d 1126. However, *Young* is distinguishable. The defendant in *Young* was sentenced in September 2007 and filed a motion to reconsider sentence in October 2007. *Young*, 387 Ill. App. 3d at 1127. The court never refers to the motion as untimely, implying that the motion was timely filed. In contrast, defendant here failed to file any timely motion.

¶ 14 Finally, defendant claims that the trial court's failure to ascertain whether he understood the admonishments was improper. In support, defendant cites to several cases in which the trial court asked whether the defendant understood the admonishments. *Claudin*, 369 Ill. App. 3d at 533; *Lloyd*, 338 Ill. App. 3d at 382; *People v. Harper*, 315 Ill. App. 3d 760, 762 (2000); *Anderson*, 309 Ill. App. 3d at 419. However, as defendant acknowledges, Rule 605 does not require that the trial court ask whether a defendant understands his rights and we will not impose such a requirement here. See *People v. Griffin*, 305 Ill. App. 3d 326, 332 (1999).

¶ 15 As defendant filed an untimely postplea motion and is unable to avail himself of the admonition exception, defendant has forfeited his right to a direct appeal. Accordingly, we dismiss the appeal.

¶ 16 Appeal dismissed.