

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
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-2344
)	
VICTOR CRUZ-CARRILLO,)	Honorable
)	Blanche Hill Fawell,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Schostok concurred in the judgment.

ORDER

Held: We dismissed defendant's appeal, as defendant did not comply with Rule 604(d) and, although the trial court admonished him that counsel would be appointed (as opposed to appointed to assist him with his postplea motion), it substantially complied with Rule 605(c).

¶ 1 Pursuant to an agreement with the State, defendant, Victor Cruz-Carrillo, pleaded guilty to a single count of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2008)). In exchange for his plea, the State dismissed another charge and agreed to recommend that defendant's sentence would not exceed 22 years' imprisonment. The trial court sentenced defendant to an 18-

year prison term. Defendant moved for reduction of his sentence, but the State successfully moved to strike the motion. Defendant did not move to withdraw his plea and vacate the judgment. We granted defendant leave to file a late notice of appeal. Defendant argues that the trial court failed to properly admonish him in accordance with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001) and that the case must therefore be remanded to the trial court for further proceedings. We disagree. We further conclude that this appeal must be dismissed.

¶ 2 Rule 605(c) works in tandem with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) to promote the orderly presentation and consideration of challenges to guilty pleas and sentences entered upon guilty pleas. Those rules require that such challenges initially be raised in the trial court and ensure that the defendant has a fair opportunity to do so. Rule 604(d) provides in pertinent part:

“No appeal from a judgment entered upon a plea of guilty shall be taken unless the 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. 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. For purposes of this rule, a negotiated plea of guilty is one in which the prosecution has bound itself to recommend a specific sentence, or a specific range of sentence, or where the prosecution has made concessions relating to the sentence to be imposed and not merely to the charge or charges then pending.”

¶ 3 Rule 605(c) safeguards the defendant's right to review of his or her plea or sentence by mandating that, when sentence is imposed upon a defendant who has entered a negotiated guilty plea, he or she be admonished 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;

(3) that if the motion is allowed, 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 a part of a plea agreement will be reinstated and will also be set for trial;

(5) that if the defendant is indigent, a copy of the transcript of the proceedings at the time of the defendant's plea of guilty and sentence will be provided without cost to the defendant *and counsel will be appointed to assist the defendant with the preparation of the motions*; and

(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 vacate the judgment and to withdraw the plea of guilty shall be deemed waived.” (Emphasis added.) Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001).

¶ 4 Here, because the State made a sentencing concession, defendant's plea was negotiated within the meaning of the rule and, to take an appeal, he was obligated to move to withdraw his plea and vacate the judgment. Defendant moved only for reduction of his sentence. The consequences of failing to file the proper motion under Rule 604(d) depend on whether the defendant was properly

admonished under Rule 605(c). If so, the appeal must be dismissed. See *People v. Jamison*, 181 Ill. 2d 24, 28-29 (1998). If not, the proper remedy is to remand to the trial court so that the defendant may be properly admonished. *Id.* at 29-30.

¶ 5 After pronouncing sentence, the trial court admonished defendant as follows:

“You have the right to appeal. To do so you must within 30 days file a written motion asking for leave to withdraw the plea of guilty and to have the judgment vacated. Any issue not raised in the motion to vacate is waived. If you do nothing, you give up your right to appeal. If the motion is allowed, the plea of guilty will be vacated and the matter set for trial. The charge that was dismissed by the State would be reinstated and also set down for trial. If you’re indigent counsel and transcripts will be provided to you.”

Defendant argues that that the admonitions were deficient and that a remand is required. “Although the trial court is not required to use the exact language of the rule, the admonitions are insufficient where the trial court leaves out the substance of the rule.” *People v. Dunn*, 342 Ill. App. 3d 872, 881 (2003). The failure to advise the defendant of the right to the assistance of counsel in connection with a postplea motion renders the admonitions insufficient. See *People v. Lloyd*, 338 Ill. App. 3d 379, 385 (2003).

¶ 6 Defendant argues that, although the trial court advised him of the right to counsel, the court did not specify that counsel would be available to assist him with his motion to withdraw his guilty plea and vacate the judgment. However, as the State notes, *Dunn* held that a similar omission did not render the admonitions insufficient. The admonition in *Dunn* was as follows:

“ ‘Sir, you have a right to appeal. Prior to doing that, you have to file a motion to withdraw your plea of guilty within 30 days in writing setting forth all the reasons why you

want me to allow you to withdraw your plea of guilty. Any reasons not set forth in your motion will be waived for purposes of appeal. If you couldn't afford an attorney or a copy of the transcript, those will be provided for you free of charge. If I allow you to withdraw your plea of guilty, all charges will be reinstated.' ” *Dunn*, 342 Ill. App. 3d at 876.

¶ 7 In an effort to distinguish *Dunn*, defendant argues as follows:

“A sensible reading of [the] admonishments [in *Dunn*] is that, because the preceding sentences dealt specifically with the ‘motion,’ the judge’s statements about providing transcripts and an attorney did as well. This contrasts with the admonishments in this case, where the preceding sentences were talking about ‘trial’—specifically the trial that would be held if the motion to withdraw was allowed.”

Thus, according to defendant, “[u]nlike in *Dunn*, the message that was conveyed in this case was that, if the matter was set down for trial, then counsel and transcripts would be provided.” Defendant’s argument hinges on the sequence in which the various admonitions were given. The argument is unpersuasive, however, because in this case the sequence conformed precisely to Rule 605(c). Defendant was told that an attorney would be appointed if he could not afford one. Although the trial court did not explicitly state that the attorney would assist defendant with the requisite postplea motion, the admonitions conveyed the substance of Rule 605(c). See *People v. Dominguez*, 2012 IL 111336, ¶ 11. Any distinction between this case and *Dunn* is insignificant. Accordingly, defendant has not established a basis for excusing his noncompliance with Rule 604(d) and we must dismiss this appeal.

¶ 8 Appeal dismissed.