

NOTICE  
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2012 IL App (4th) 110197-U  
NO. 4-11-0197  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

FILED  
October 17, 2012  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: HILLARD M., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 10JD86
HILLARD M.,	)	
Respondent-Appellant.	)	Honorable
	)	Elizabeth A. Robb,
	)	Judge Presiding.

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JUSTICE KNECHT delivered the judgment of the court.  
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court vacated and remanded where the trial court, prior to accepting respondent's guilty plea, failed to admonish respondent he could be ordered to pay restitution.
- ¶ 2 In August 2010, respondent, Hillard M., entered an admission to (1) unlawful possession of a controlled substance, (2) mob action, and (3) two counts of possession of a handgun. The trial court adjudicated respondent a delinquent minor and in November 2010 sentenced him to the Department of Juvenile Justice (Department) for an indeterminate length of time not to exceed three years. The court also ordered respondent to be jointly and severally liable for over \$20,000 in restitution costs.
- ¶ 3 In December 2010, respondent filed a motion to reconsider sentence and a motion to withdraw guilty plea. Following a hearing, the trial court denied both motions.

¶ 4 Respondent appeals, arguing the trial court erred by denying his motion to withdraw guilty plea because the court did not properly admonish him about the possibility of being ordered to pay restitution. We vacate and remand.

¶ 5 I. BACKGROUND

¶ 6 In August 2010, the State filed a petition for adjudication of wardship, charging respondent, born March 1, 1995, with (1) unlawful possession of a controlled substance, a Class 4 felony (720 ILCS 570/402(c) (West 2010)), (2) robbery, a Class 2 felony (720 ILCS 5/18-1(a), (b) (West 2010)), and (3) mob action that inflicted injury on the victim, a Class 4 felony (720 ILCS 5/25-1(a)(1), (d) (West 2010)). Later that month, the State filed a supplemental petition for adjudication of wardship, charging respondent with two counts of unlawful possession of a handgun, a Class 4 felony (720 ILCS 5/24-3.1(a)(1), (b) (West 2010)), and one count of unlawful possession of a firearm, a Class A misdemeanor (720 ILCS 5/24-3.1(a)(2), (b) (West 2010)).

¶ 7 That month, the parties appeared before the trial court. Respondent's attorney indicated respondent wished to enter an admission to unlawful possession of a controlled substance, mob action, and two counts of unlawful possession of a handgun. In exchange, the State agreed to dismiss the robbery and unlawful possession of a firearm charges. The trial court confirmed respondent understood by admitting the charges, respondent would give up his right to a trial, at which the State would have to call witnesses and respondent could call witnesses and testify on his own behalf. In addition, the court confirmed defendant had not been forced or threatened to plead guilty.

¶ 8 The trial court also admonished respondent as follows:

"By admitting to these offenses the court can find that

you're a delinquent minor, the court can place you on a term of probation [until] you're 21, sentence you to thirty days detention, transfer guardianship to juvenile court services who could place you outside your home or the court could sentence you to the Department of Juvenile Justice which is a juvenile penitentiary on all of these \*\*\* charges for up to 3 years."

¶ 9           Thereafter, the trial court found respondent's admission was made knowingly and voluntarily. The State presented the following factual basis for the pleas. On July 30, 2010, officers responded to a call to a battery report. Upon arriving on the scene, the officers encountered the victim staggering back and forth in the middle of the street, bleeding profusely from the head, nose, and mouth. The victim reported he was driving down the street when respondent flagged him down and told him he needed assistance with someone who was having a medical emergency. The victim followed respondent to the back of a home at 910 West Jefferson, where two other juvenile males beat the victim, took his cellular phone, and fled.

¶ 10           Witnesses to the incident identified respondent and the other juveniles by name, and officers located respondent inside his home at 913 West Jefferson. Later, the officers obtained a warrant to search 910 West Jefferson for the victim's property. During this search, the officers discovered less than 15 grams of individually packaged rocks of crack cocaine, which defendant told officers he found around a nearby grocery store and transported to 910 West Jefferson. The officers also later returned to respondent's residence and discovered a .22 caliber Rohm revolver handgun and a .22 caliber Iver Johnson revolver handgun, both of which had live rounds of ammunition.

¶ 11 After finding a factual basis supported respondent's admission, the court adjudicated respondent delinquent.

¶ 12 In October 2010, the parties appeared for respondent's sentencing hearing. Respondent's attorney indicated he was not ready to proceed because "some restitution issues" had arisen. He explained "a large amount" of restitution had been requested, and a dispute had arisen "over some cash." The trial court continued the hearing.

¶ 13 The parties appeared for the continued sentencing hearing in November 2010. In addition to recommending the trial court sentence respondent to the Department, the State also recommended the court order respondent to pay restitution to the victim and the victim's insurer. The court later found, for reasons other than financial reasons, respondent's mother was unable to properly care for and supervise respondent. Thereafter, the court sentenced respondent to the Department for an indeterminate term, not to exceed three years, with 12 days' credit for time previously served. The trial court also ordered respondent to pay \$2,972.44 in restitution costs to the victim and \$18,131.93 in restitution costs to Wellmark Blue Cross-Blue Shield of Iowa within 12 months of his release from the Department. The court ordered the restitution to be joint and several with respondent's accomplice.

¶ 14 In December 2010, respondent filed both a motion to reconsider sentence and a motion to withdraw guilty plea. His motion to withdraw guilty plea alleged, among other things, he wished to withdraw his plea to the mob action charge because he "was under the misunderstanding that he would not be held responsible for the actions that occurred to the victim of the robbery." Following a February 2011 hearing, the trial court denied both of respondent's motions. With respect to respondent's motion to withdraw guilty plea, the court

noted it "adequately and appropriately admonished [respondent] with the types of penalties that could be imposed."

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Respondent's sole argument on appeal is the trial court erred when it denied his motion to withdraw guilty plea to mob action. Specifically, respondent argues the trial court did not comply with Illinois Supreme Court Rule 402(a)(2) (eff. July 1, 1997) because it failed to admonish him about the possibility of restitution before accepting his guilty plea. The State responds the court did not err because in *In re Beasley*, 66 Ill. 2d 385, 389, 362 N.E.2d 1024, 1026 (1977), the supreme court explicitly concluded Rule 402 does not apply to juvenile proceedings.

¶ 18 We need not address whether Rule 402 applies to juvenile proceedings because, subsequent to *Beasley*, the legislature made significant amendments to the Juvenile Court Act of 1987 (Juvenile Act). Public Act 90-590 (Pub. Act 90-590, art. 2001, § 2001-10 (eff. Jan. 1, 1999) (1998 Ill. Laws 1035, 1189)) added section 5-605. Section 5-605 provides, in relevant parts, as follows:

"Before or during trial, a plea of guilty may be accepted when the court has informed the minor of the consequences of his or her plea and of the maximum penalty provided by law which may be imposed upon acceptance of the plea." 705 ILCS 405/5-605(2)(a) (West 2010).

¶ 19 Accordingly, we must consider whether the trial court complied with section 5-

605(a)(2). We conclude it did not.

¶ 20 We are guided by the First District's analysis in *In re Timothy P.*, 388 Ill. App. 3d 98, 903 N.E.2d 28 (2009). There, the respondent argued the trial court failed to comply with section 5-605(a)(2) of the Juvenile Act when it told the respondent he could be committed to the Department but did not tell the respondent he could be committed for an indeterminate time up until his twenty-first birthday. *Timothy P.*, 388 Ill. App. 3d at 101, 903 N.E.2d at 30. Because respondent's claim was an issue of first impression, the First District considered it in the context of adult pleas under Rule 402. *Timothy P.*, 388 Ill. App. 3d at 102, 903 N.E.2d at 31. The court noted Rule 402 requires only substantial compliance, and in considering whether a Rule 402 admonishment is sufficient, the court may consider the entire record to assess whether a defendant understood the nature of the charges against him. *Id.* Applying these principles, the First District found the trial court failed to substantially comply with section 5-605(a)(2). *Timothy P.*, 388 Ill. App. 3d at 103, 903 N.E.2d at 32. The court reasoned, absent the trial court's admonishments, it could not conclude the respondent made his guilty plea "with full knowledge of the potential consequences." *Timothy P.*, 388 Ill. App. 3d at 103, 903 N.E.2d at 32.

¶ 21 Here, the trial court admonished respondent about possible sentences but did not mention restitution. Moreover, we cannot find anything in the record indicating respondent knew before entering his plea he could be ordered jointly and severally liable for over \$20,000 in restitution costs. Based on the foregoing, we conclude the trial court failed to substantially comply with section 5-605(a)(2).

¶ 22 Respondent cites *People v. Snyder*, 2011 IL 111382, 959 N.E.2d 656, for the proposition that respondent must be given the opportunity to withdraw his guilty plea. In *Snyder*,

