NOTICE
Decision filed 02/10/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 100593-U

NO. 5-10-0593

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Hamilton County.
	)	
v.	)	No. 07-CF-9
	)	
DAN WAECKERLE, JR.,	)	Honorable
	)	Barry L. Vaughan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's denial of the defendant's motion to reconsider his sentence is vacated and remanded because the circuit court gave the defendant improper admonitions under Rule 605(c) and the defendant's counsel failed to file a certificate with his motion to reconsider the sentence pursuant to Rule 604(d).

¶ 2 The defendant, Dan Waeckerle, Jr., was charged with three counts of aggravated criminal sexual abuse. 720 ILCS 5/12-16(d) (West 2006). He entered a negotiated plea of guilty to count one of the charges in exchange for dismissal of the other charges and an agreement by the State to request no more than four years' imprisonment. He appeals the denial of his motion to reconsider his sentence and requests that this court remand for further consideration by the circuit court. The State has filed a confession of error. We find the defendant's contentions and the State's confession to be well-taken. For the following reasons, we vacate the circuit court's denial of the defendant's motion and remand the cause for further proceedings.

¶ 3 BACKGROUND

¶ 4 On July 19, 2010, the circuit court sentenced the defendant to four years' imprisonment. The defendant then filed a motion to reconsider his sentence on August 30, 2010. On November 18, 2010, the circuit court denied the defendant's motion to reconsider his sentence. There are two issues within this appeal. First, the defendant argues that the circuit court gave the defendant improper admonishments about filing an appeal when the court told the defendant that he must file "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." The second issue is that the defendant's counsel failed to file a certificate of compliance in accordance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 5 ANALYSIS

¶ 6 We review *de novo* the circuit court's compliance with supreme court rules. *People v. Dismuke*, 355 Ill. App. 3d 606, 608 (2005); *People v. Prather*, 379 Ill. App. 3d 763, 768 (2008).

¶ 7 Rule 605(c) states, in relevant part, that a trial court is required to advise a defendant who entered into a negotiated plea "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." Ill. S. Ct. R. 605(c)(2) (eff. Oct. 1. 2001). A negotiated plea 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." Ill. S. Ct. R. 604(d) (eff. July 1, 2006). In this case, the defendant's plea was a negotiated plea because the State agreed to dismiss certain charges and recommend a sentencing cap. See *People v. Linder*, 186 Ill. 2d 67, 74 (1999).

¶ 8 When a defendant enters into a negotiated plea with the State and subsequently

wishes to challenge his sentence, he must first move to withdraw his guilty plea and vacate the judgment. Ill. S. Ct. R. 605(c) (eff. Oct. 1, 2001). In this case, the circuit court told the defendant that, in order to appeal his sentence, he must file a motion to reconsider his sentence *or* file a motion to withdraw his guilty plea, which is not in accord with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001). When the circuit court fails to properly admonish a defendant on how to perfect an appeal from a negotiated plea, the case should be remanded to the circuit court with directions for proper admonishment. *People v. Pressey*, 357 Ill. App. 3d 887, 889-90 (2005).

¶ 9 In order for a defendant to file a motion to reconsider his sentence, defense counsel must also file a certificate in accordance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). In this case, defense counsel failed to file the certificate. In cases where defense counsel has failed to file the certificate, the remedy is a remand to the circuit court for the filing of a new postplea motion. *People v. Hayes*, 195 Ill. App. 3d 957, 960-61 (1990). Therefore, this case should be remanded so that defense counsel can file a certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. July 1, 2006).

¶ 10 The reviewing courts have held that strict compliance with Rule 604(d) is necessary. *People v. Janes*, 158 Ill. 2d 27, 33 (1994). Further, Rule 604(d) and Rule 605(c) are "meant to work together" and are therefore both strictly applied. *People v. Jamison*, 181 Ill. 2d 24, 29-30 (1998). The appropriate remedy for a circuit court's failure to strictly comply with Rule 604(d) and Rule 605(c) by failing to properly admonish under Rule 605(c) and the defendant's failure to file a certificate under Rule 604(d) is to remand to the circuit court so that the circuit court can properly admonish the defendant and give the defendant the opportunity to comply with Rule 604(d). *Flowers*, 208 Ill. 2d 291, 301 (2003).

¶ 11 In this case, it is clear from the record that the circuit court improperly admonished the defendant and the defendant's counsel did not file a certificate with his motion to

reconsider.

¶ 12 CONCLUSION

¶ 13 For the foregoing reasons, the circuit court's denial of the defendant's motion to reconsider his sentence is vacated and remanded with directions for proper admonitions by the circuit court under Supreme Court Rule 605(c) and the filing of a certificate of compliance pursuant to Supreme Court Rule 604(d), to afford the defendant the opportunity to file a new motion, and for a new hearing on the motion.

¶ 14 Judgment vacated; cause remanded with directions.