

No. 1-11-2217

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 C6 61786
	)	
MATTHEW TINES,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE SIMON delivered the judgment of the court.  
Justices Quinn and Connors concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant's failure to file a Supreme Court Rule 604(d) post-plea motion was not excused where the trial court properly admonished him under Supreme Court Rule 605(b); appeal dismissed.
- ¶ 2 Defendant Matthew Tines entered an open plea of guilty to felony retail theft and was sentenced to an extended term of four years imprisonment. Defendant did not file a post-plea motion to perfect an appeal from that judgment, but, instead, filed a notice of appeal. In this court, defendant maintains that the circuit court had no authority to sentence him where it withdrew its initial concurrence with the agreed-upon sentencing recommendation and then failed to offer him an opportunity to affirm or withdraw his plea of guilty.

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¶ 3 The record shows that on January 31, 2011, defense counsel advised the court that defendant was pleading guilty to retail theft in agreement for a sentence of two years imprisonment. The court then informed defendant that it was not a party to the agreement, and, therefore, not bound by it, and that the court could sentence defendant to the maximum term of five years imprisonment. The State then presented a factual basis for the plea which showed that on September 15, 2009, defendant removed two bottles of liquor from Matteson Liquors, at 4239 West 211th Street in Matteson. Defendant left the store without paying for the liquor which had a retail value of \$80. After admonishing defendant, the court accepted his plea of guilty. At defendant's request, the matter was continued for sentencing on March 18, 2011.

¶ 4 Defendant failed to appear on that date. The court issued a warrant for his arrest and continued the matter to April 18, 2011. When defendant again failed to appear, the court entered a \$10,000 fine against him for failing to appear, noted that the warrant was still in effect, and continued the matter to May 12, 2011. Defendant appeared on that date, and the State informed the court that it was withdrawing its two-year sentencing offer based on defendant's prior failure to appear. The court then continued the matter for the preparation of a presentence investigation (PSI) report.

¶ 5 On June 13, 2011, the State requested a sentence of five years imprisonment noting that defendant committed the instant offense while on parole. The court stated that it reviewed defendant's PSI report, which documented 11 prior felony convictions. The court then sentenced defendant to four years imprisonment, and admonished him as follows:

"[y]ou have the right to appeal.

Before you can appeal, within 30 days of today's date you must file with the Court a written motion to reconsider the sentence and if only the sentence is being challenged or if the plea is being challenged, you must file a written motion to withdraw your guilty plea and you must state all the reasons why you want to withdraw

the plea of guilty or otherwise why your sentence should be withdrawn.

If I grant your motion to reconsider sentence, I will conduct a new sentencing hearing and if I grant your motion to conduct a new hearing, I will set the guilty plea aside and set the case for trial.

Any charges that were dismissed [as] part of this plea, however, will be reinstated by the State, or at the State's request, and also set for trial.

If I denied your motion, then you have 30 days from the date of that denial to file a written notice of appeal.

Any issue or claim of error not raised in the motion to reconsider the sentence or motion to withdraw the guilty plea, however, will be waived for appeal purposes, and if you cannot afford [an] attorney or cost of transcripts or both, they will be given to you free of charge."

¶ 6 Defendant then addressed the court as follows: "[t]he case was originally one to three, so that means I am still eligible for --." The court interjected, explaining that defendant had an extensive background which "means it was a felony." Defendant responded, "[i]t was upgraded and that means that was the standard term." The court told defendant that he was wrong, then terminated the proceeding.

¶ 7 On appeal, defendant maintains that the circuit court lacked authority to sentence him after it withdrew its concurrence with the agreed-upon sentencing recommendation, and then failed to offer him the opportunity to affirm or withdraw his plea of guilty as required by Rule 402(d)(2) (eff. July 1, 2012). He claims that the judgment was therefore void, and must be vacated and the cause remanded for the circuit court to comply with Rule 402(d)(2).

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¶ 8 Defendant acknowledges that he failed to file post-plea motions consistent with Supreme Court Rule 604(d) (eff. July 1, 2006), but maintains that by filing a timely notice of appeal, he evidenced his intent to challenge the proceedings in his case. In support of that argument, he claims that the admonishments by the court regarding how to proceed on appeal were inadequate. The State initially responds that this court may not consider the merits of this cause because defendant failed to file the requisite motion to either challenge his sentence or withdraw his guilty plea as required by Rule 604(d).

¶ 9 The State correctly observes that in order to perfect an appeal from either an open or negotiated plea of guilty, defendant must first file a post-plea motion within 30 days of his sentencing. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). Where, as here, defendant fails to file a Rule 604(d) motion, and, instead, files a notice of appeal, this court cannot consider his appeal on the merits unless a recognized exception to the rule applies. *People v. Foster*, 171 Ill. 2d 469, 472-73 (1996).

¶ 10 To avoid this result, defendant posits that the trial court's Rule 605(b) admonishments were "garbled and prolix," and confusing to the point where a defendant in his position could not reasonably understand that he would lose his right to appeal if he did not file the proper document. As such, he invokes the admonishment exception.

¶ 11 Supreme Court Rule 605(b) (eff. Oct. 1, 2001) serves as a corollary to Rule 604(d) and sets forth the admonitions the circuit court must give a defendant who has pleaded guilty without a negotiated sentence. *People v. Brooks*, 233 Ill. 2d 146, 154 (2009). The supreme court recently determined that the court must strictly comply with Rule 605(b), and admonish a defendant who has pleaded guilty of its provisions; however, the court also affirmed that the plain meaning of the rule requires only that a defendant be substantially advised of the actual content of the rule, *i.e.*, the rule need not be read verbatim. *People v. Dominguez*, 2012 IL 111336, ¶11. The supreme court stated that the trial court must substantially advise defendant in such a way that he is properly informed, or put on notice, of what he must do in order to preserve his right to appeal

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his guilty plea or sentence and, that so long as the admonitions were sufficient to impart to defendant the essence or substance of the rule, the court has substantially complied with it.

*Dominguez*, ¶22. We review the trial court's compliance with the rule *de novo*. *People v. Breedlove*, 213 Ill. 2d 509, 512 (2004).

¶ 12 In this case, the record shows that the trial court clearly and unequivocally admonished defendant of the six admonishments set forth in Rule 605(b). The court advised defendant that he has the right to appeal, that he must within 30 days file a motion to reconsider sentence, or a motion to withdraw the guilty plea, that if the post-plea motion is granted, the plea will be vacated and a trial date set, that any charges dismissed will be reinstated, that if he is indigent, a transcript of proceedings and attorney would be provided to defendant free of charge, and that any issue not raised in the post-plea motion will be waived for appeal.

¶ 13 Citing *Dominguez*, defendant maintains that the mere recitation of Rule 605 admonishments is not sufficient, and that the trial court must make some inquiry into whether defendant understood the admonishments. In so arguing, defendant overstates the case and ignores the factual setting in *Dominguez* where defendant did not speak English, and both written and oral admonishments were given. *Dominguez*, ¶¶5-6, 36. Under those circumstances, the supreme court found that the circuit court was required to ascertain whether defendant was aware of the content of the written admonishments and understood them, noting that written admonishments may only be given in addition to oral admonishments to supplement or complement them. *Dominguez*, ¶¶27, 36.

¶ 14 Here, unlike *Dominguez*, defendant spoke English, only oral admonishments were given, and no language impediments were indicated. Thus, defendant's attempt to expand the ruling in *Dominguez* to this case is without foundation, particularly where the supreme court in *Dominguez* held that the circuit court need only convey to defendant the "essence" of the rule. *Dominguez*, ¶22. As found above, the circuit court did more than convey the essence of the rule. It advised defendant of the Rule 605(b) provisions, including the necessity of filing a post-plea

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motion prior to taking an appeal. *Dominguez*, ¶54; *People v. Claudin*, 369 Ill. App. 3d 532, 534 (2006).

¶ 15 Defendant, nonetheless, maintains that we may consider this appeal because a void sentence may be attacked at any time. In support of this assertion, defendant cites to *People v. Rossman*, 309 Ill. App. 3d 662 (2000), *People v. Allen*, 386 Ill. App. 3d 30 (2008), and *People v. White*, 2011 IL 109616. None of these cases held that a sentence entered after the court withdrew its concurrence in the sentencing agreement and did not offer defendant the opportunity to affirm or withdraw his guilty plea is void. In *Rossman*, 309 Ill. App. 3d at 668, 670, the reviewing court held that the trial court violated Rule 402(d)(2) by sentencing defendant to a greater sentence than the agreed upon sentence it had concurred with after withdrawing its concurrence when it did not offer defendant the chance to affirm or withdraw his guilty plea and sentenced him *in absentia*. *Rossman*, however, did not hold that the resulting sentence was void. It merely found that the resulting sentence was erroneous, vacated the sentence and remanded to the trial court for compliance with Rule 402(d)(2).

¶ 16 *Rossman*, 309 Ill. App. 3d at 670. We further observe that *Allen*, 386 Ill. App. 3d at 37-38, and *White*, ¶20, are not pertinent as they hold only that a sentence that does not conform to a statutory requirement is void. None of these cases stand for defendant's proposition that the circumstances related to the sentence entered in this case rendered it void.

¶ 17 As explained above, because defendant failed to file the required post-plea motion, this court cannot consider his appeal on the merits and it is, therefore, dismissed. *Foster*, 171 Ill. 2d at 471-73.

¶ 18 Appeal dismissed.