

No. 1-11-2281

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. 04 MC1 267117
)	
FERNANDO RODRIGUEZ,)	Honorable
)	Thomas J. Byrne,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Harris and Justice Connors concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant filed motion to withdraw his guilty plea more than six years after its entry, circuit court correctly denied motion as untimely, despite inadequate admonitions by original trial judge; the judgment of the circuit court was affirmed.
- ¶ 2 Defendant Fernando Rodriguez appeals the circuit court's denial of his 2011 motion to withdraw his 2004 guilty plea. On appeal, defendant contends the trial court failed to correctly admonish him of the consequences of his guilty plea, and he argues his case warrants an exception to the holding in *People ex rel. Alvarez v. Skryd*, 241 Ill. 2d 34 (2011), that a circuit court lacks subject matter jurisdiction over a defendant's untimely motion to withdraw a plea. We affirm.

1-11-2281

¶ 3 On November 8, 2004, defendant pled guilty to one count of the possession of cannabis (720 ILCS 550/4(a) (West 2002)) and was sentenced to three months of court supervision. The following exchange represents that court proceeding in its entirety, after defendant's case was called by the clerk:

"THE COURT: All right. Sir, do you understand the charge against you, sir?

DEFENDANT: Yes, sir.

THE COURT: How do you plead, guilty or not guilty?

DEFENDANT: Guilty.

THE COURT: Where is the State at?

MR. GILMARTIN [Assistant State's Attorney]: Right here.

THE COURT: You need to be at the bench. All right. Sir, do you understand the charge against you?

DEFENDANT: Yes, sir.

THE COURT: How do you plead, guilty or not guilty?

DEFENDANT: Guilty.

THE COURT: Do you understand when you plead guilty, you give up your right to a bench trial and your right to a trial before a [j]udge?

DEFENDANT: Yes.

THE COURT: Do you understand what a bench trial and jury trial are?

DEFENDANT: Yes, sir.

THE COURT: Is this your signature at the bottom of the document?

DEFENDANT: Yes, sir.

THE COURT: When you sign it, you give up your right to a jury trial.

DEFENDANT: Yes, sir.

1-11-2281

THE COURT: Has anyone forced you or threatened you into pleading guilty?

DEFENDANT: No, sir.

THE COURT: You're pleading guilty of your own freewill?

DEFENDANT: Yes, sir.

THE COURT: State, is there a stipulation to the facts in the case?

MR. GILMARTIN: So stipulated.

THE COURT: Is there anything you wish to say before I impose sentence, sir?

DEFENDANT: No.

THE COURT: Three months court supervision. That gives you an opportunity to expunge your record if you don't pick up any other cases and it terminates February 7, 2005. Good luck to you."

¶ 4 On July 6, 2011, more than six years after that proceeding, defendant filed a motion to withdraw the guilty plea and vacate the judgment against him pursuant to Supreme Court Rule 604(d) (Ill. S. Ct. R. 604(d) (eff. Nov. 1, 2000)). Defendant argued in the motion that the trial court failed to comply with Supreme Court Rule 402 (Ill. S. Ct. R. 402 (eff. July 1, 1997)), which requires the court to admonish a defendant of the nature of the charge, the minimum and maximum sentences and that he had the right to plead guilty or not guilty, and that if he chose to plead guilty, he would waive the right to a trial by jury. Defendant further argued the court failed to admonish him of the immigration consequences of a guilty plea, citing section 113-8 of the Code of Criminal Procedure of 1963 (725 ILCS 5/113-8 (2004)), which requires the court to admonish a defendant entering a guilty plea that if he or she is not a citizen of the United States, a conviction on the charged offense "may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States." That law took effect January 1, 2004, and was thus in effect when defendant entered his plea.

¶ 5 In seeking to withdraw his plea, defendant asserted he has suffered prejudice as a result of his plea and the court's inadequate admonitions because he "currently has pending before the United States Department of Homeland Security an application for permanent residence status that is being adversely affected by this plea and conviction in this case." The affidavit of defendant's immigration attorney stated that if the plea was not vacated, defendant could be denied permanent residence status and deportation proceedings could begin against him. Defendant attested in his own affidavit that had he known of his plea's effect on his application for permanent residence in the United States, he would not have pled guilty. Defendant also asserted his attorney at the time of his plea provided ineffective assistance of counsel and the absence of proper admonitions in his case deprived him of due process under the Illinois constitution.

¶ 6 On the day the motion was filed, the circuit court heard argument and denied defendant's motion to withdraw his plea. The court acknowledged the trial court's admonitions to defendant upon accepting his guilty plea were "replete with error" and that defendant was not properly admonished under the requirements of Rule 402 or informed of his right to appeal pursuant to Illinois Supreme Court Rule 605 (Ill. S. Ct. R. 605 (eff. Oct. 1, 2001)). Nevertheless, the circuit court determined, citing *Skryd*, that it lacked jurisdiction to consider defendant's motion to withdraw his plea because the motion was filed more than 30 days after the plea. Defendant now appeals that ruling.

¶ 7 On appeal, defendant contends that the circuit court did not substantially comply with Rule 402 and also did not admonish him pursuant to section 113-8 of the consequences of his plea on his immigration status. He argues that despite the untimely filing of his motion to withdraw his plea, an exception should be crafted to the rule in *Skryd* whereby the circuit court could retain jurisdiction over his motion and correct the erroneous admonitions.

¶ 8 As set out in part above, the circuit court in this case was required to admonish defendant pursuant to Rule 402 as to several points before accepting his guilty plea. Rule 402(a) requires

1-11-2281

the circuit court to inform the defendant and ascertain the defendant's understanding of the nature of the charge, the minimum and maximum sentence, the knowledge that he has the right to plead guilty or not guilty, and that a guilty plea forestalls the need for a trial of any kind, including a jury trial. Ill. S. Ct. R. 402(a) (eff. July 1, 1997). In addition, Rule 402(c) requires the circuit court to determine that a factual basis for the plea exists before final judgment is entered on the plea. Ill. S. Ct. R. 402(c) (eff. July 1, 1997).

¶ 9 It is evident from the record that in accepting defendant's guilty plea in 2004, the trial court failed to comply with Rule 402 in nearly every respect. The court did not inform defendant of the nature of the charge against him or the minimum or maximum sentence for his offense, and the court did not ascertain that defendant knew he had a right to plead not guilty. The court also did not hear a factual basis for defendant's plea.

¶ 10 However, 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." Ill. S. Ct. R. 604(d) (eff. Nov. 1, 2000)).

¶ 11 Despite that rule, defendant asserts that "there has to be a point at which a plea of guilty is so lacking in due process" that the trial court's errors can be remedied even in the absence of a timely motion to vacate the plea.

¶ 12 Defendant contends the supreme court in *Skryd* and in *People v. Flowers*, 208 Ill. 2d 291 (2003), described as a "general" rule the inability of a trial court to retain jurisdiction of a defendant's plea beyond the 30-day period for filing a motion to vacate. In *Flowers*, the supreme court noted that an "admonition exception" to Rule 604(d) exists where the defendant was not

1-11-2281

given the appropriate admonitions required by Rule 605, which requires a court to inform a defendant of the necessity of filing a motion to withdraw the plea within 30 days of its entry for the defendant to be able to appeal the judgment. Ill. S. Ct. R. 605 (eff. Oct. 1, 2001).

¶ 13 This court is bound to follow supreme court precedent. *People v. Gersch*, 135 Ill. 2d 384, 396 (1990). The supreme court's opinion in *Skryd* does not craft an exception to the trial court's 30-day period to exercise jurisdiction over a guilty plea. *Skryd*, 241 Ill. 2d at 40-41. In circumstances nearly identical to those in the instant case, the supreme court held in *Skryd* that the defendant's filing of a motion to withdraw his guilty plea 12 years after that proceeding did not invest the circuit court with the authority to consider the motion. *Id.*

¶ 14 The "admonition exception" does not apply in this case for the same reason the *Skryd* court found it inapplicable in that proceeding. Here, as in *Skryd*, defendant did not file a notice of appeal without first seeking to withdraw his plea in the circuit court via a Rule 604(d) motion. See *Skryd*, 241 Ill. 2d at 43. Instead, defendant filed a untimely motion to withdraw his plea at a point when the circuit court had long since lost jurisdiction over defendant's plea and conviction.

¶ 15 Accordingly, the circuit court's order denying defendant's motion to withdraw his 2004 plea is affirmed.

¶ 16 Affirmed.